





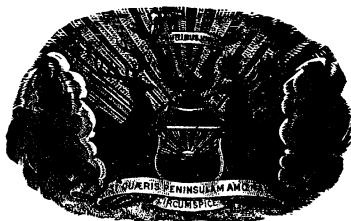
REPORT  
OF THE  
ATTORNEY GENERAL  
OF THE  
STATE OF MICHIGAN

FOR THE  
YEAR ENDING JUNE 30, A. D. 1894.

---

ADOLPHUS A. ELLIS

ATTORNEY GENERAL



---

BY AUTHORITY

---

LANSING  
ROBERT SMITH & CO., STATE PRINTERS AND BINDERS  
1894



# REPORT.

---

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, July 1, 1894.*

*To the Legislature of the State of Michigan:*

In compliance with the statutes of the State of Michigan, I have the honor herewith to submit the annual report of the Attorney General for the year commencing July 1, 1893, and ending June 30, 1894.

The various matters embraced in the report are particularly covered and referred to in the schedules hereto attached and numbered A to I inclusive. Particular reference to each schedule will be found in the index.

By an examination of the several schedules the report will be found to contain a full statement of all criminal cases brought to the Supreme Court by writ of error or otherwise, together with a statement of the facts in connection with each case, the point in dispute, and the decision of the court thereon.

A list of *mandamus*, *quo warranto* and other proceedings instituted by the Attorney General in behalf of the State or commenced by other parties, in which the State is directly interested, is here given, and in order that a full understanding may be had of the matters at issue, the report states the point raised and the decision of the court thereon.

The list of chancery cases commenced or completed during the fiscal year and the list of the cases now pending are also given. Where decisions have been rendered, a statement sufficiently full to disclose the point at issue is given, together with the decision of the court thereon.

The list of *quo warranto* and other special proceedings authorized by the Attorney General, but at the expense of other parties, is also given, together with the rulings of the court where decisions have been rendered.

The list of the chancery cases commenced in the various circuit courts in chancery, in which the State is somewhat interested, which have been referred to this office, and by this office referred to the prosecuting attorneys of the various counties, will also be found in the report. The tax law expressly provides that it shall be the duty of the prosecuting attorneys to look after cases relative to tax proceedings, and it is therefore the custom of this office to refer such matters to the prosecuting attorneys in cases where the county treasurer and the Auditor General are both made parties defendant.

Each mutual insurance company which is incorporated or which reorganizes or amends its articles of association is required to submit its

articles of association to the Attorney General for his approval. Under Act 151, Laws of 1893, the Attorney General is to receive an approval fee of five dollars, the approval fee to be paid by him into the State Treasury. The amount received during the year was forty dollars, which has been carried into the State Treasury. A list of the companies will be found in the proper schedule.

The schedule containing an abstract of the reports of the various prosecuting attorneys for the year ending June 30, 1894, showing the number of prosecutions in the State for each particular offense during the fiscal year, shows that the whole number prosecuted during the past year has been 3,239 more than those prosecuted in the preceding year, and the proportion of convictions as to the number prosecuted is .023 per cent more than in the year 1893.

In order that the results of the work of each prosecuting attorney may be known by an examination of the report, the results of the prosecutions in each county will be found in a separate schedule, which contains the name of each prosecuting attorney and his postoffice address.

The number of formal opinions given during the fiscal year is eighty. In addition to this more than two thousand letters of the same advisory character have been written to county and other officers.

The law prescribing the duties of the office does not require the Attorney General to advise county officers, excepting prosecuting attorneys, but it is frequently as easy to answer the inquiry as it is to write a letter explaining the law and referring the party to the proper official. It has therefore been the custom of the office during the present incumbency to answer all inquiries, and as far as possible give the information required.

The work in the Attorney General's office is constantly increasing. Michigan is a very large and wealthy State, and each Legislature creates some new department or institution to look after the interests of the State. Among such new departments or institutions which have been created since the salary of the Attorney General was fixed at eight hundred dollars, and which require the advice and counsel of the Attorney General, are the following: The Insurance Department, the Railroad Department, the Banking Department, the Labor Bureau, the State House of Correction and Reformatory at Ionia, the Branch of the State Prison at Marquette, the Asylum for Insane Criminals at Ionia, the Reform School for Boys at Lansing, the Industrial Home for Girls at Adrian, the State Public School at Coldwater, the Soldiers' Home at Grand Rapids, the Michigan School for the Blind; also the following State boards: The State Board of Health, the State Board of Corrections and Charities, the State Board of Fish Commissioners, the State Live Stock Sanitary Commission.

The above are only those which I readily call to mind, but an examination of the statutes would undoubtedly show a great many more.

The heads of departments, institutions or boards thus created are among those who make a demand upon the Attorney General to interpret the law for them and assist them concerning the performance of their several duties. Hence, the organization of these several departments and institutions makes the work of the Attorney General much more laborious and responsible.

The character of the litigation to be looked after and managed by the Attorney General involves questions of the greatest importance to the people of the State, and as the value of property increases, and the number of corporations organized in this State multiply, these questions become more and more important each year.

During the past four years the tax laws of the State of Michigan have been twice changed; this, with the change in the system of voting in the State, has precipitated upon the legal department a vast amount of work. The questions thus arising have been answered so far as time would permit. From the changes in the tax laws many suits have been commenced and are now pending in the various courts of the State, and much time and labor will yet have to be spent before they can be finally settled.

At the time of making the annual report of 1893, it was thought that the Attorney General's department, so far as the Attorney General was concerned, was on a fair basis and in a position where he could be expected to devote his entire time to the business of the State. Hence in the report of 1893 it was only urged upon the Legislature that they provide the Attorney General with a deputy, and place this department upon the same basis with the other State departments, giving the Attorney General full charge in controlling the litigation of the State in all cases where the State was interested. What was then said will be found on pages five and six of the report for 1893, and without here repeating, I urge upon the incoming Legislature the change in the laws there suggested.

Owing to matters which have come to my knowledge since the filing of my last report, in submitting this, the fourth annual report which has been made since my incumbency of the office of Attorney General, there are some matters which, in the interests of the taxpayers of the State, I desire to especially call to your attention.

My time will expire before the changes which I now urge can be accomplished, so that I feel great liberty in making a statement of the facts and urging you to take action upon the line suggested.

Very shortly after entering upon the discharge of the duties of this office in January, 1891, my attention was called to the fact that the business of the Attorney General's office had largely increased since the adoption of the constitution of 1850, and that the demand upon the time and ability of that official was increasing each year; also that the provisions for caring for the work were the same they were forty years ago, when the entire business of the State did not exceed in value or importance the business of a single agricultural county at the present time.

At the time the constitution was adopted, as appears by the constitutional debates, it was not anticipated that it would take the entire time of the Attorney General to perform the duties of the office, and it was so stated in the constitutional debates, when the salary was fixed at \$800. Not only have the demands upon the time of the Attorney General increased since that time, but the expense of living and the earning capacity of good attorneys have greatly changed. The salary fixed in 1850 at \$800 was so illy fitted to the present work and the expense of living, that without any apparent protest from the people, and probably without the knowledge of any great number, two plans were inaugurated to relieve the Attorney General.

First, a good per cent of the important business of the office was farmed out to outside attorneys, who charged to the State of Michigan retainers ranging everywhere from \$25 to \$100 per case, and also charged for their services from \$25 to \$100 per day.

Second, in 1887 the law was so changed that the prosecuting attorneys of the several counties were to follow their cases to the Supreme Court. The making of briefs, the expense of travel, and the attendance upon the Supreme Court were all at the expense of the State of Michigan.

The amount of money paid out in these ways to assist the Attorney General was enormous; but even with these provisions much of the work that should have been done in the Attorney General's department was neglected. The State officials who had occasion to call for legal advice were put to much trouble in order to reach the head of the department, and the State upon account of neglect lost many thousands of dollars.

Believing that it would save money to the taxpayers of the State, and having been requested by the Legislature of 1891 to make a report concerning the work and help in my department, I called the attention of that Legislature to the then existing condition of affairs in the Attorney General's office. Afterwards a committee was appointed by the Senate to investigate the matter. That committee made a report to the Senate, and as that report is a fair statement of the condition of affairs at that time, so far as the hiring of outside help was concerned, I insert the same herein. The report is as follows:

“ REPORTS OF SELECT COMMITTEES.

The select committee appointed to ascertain the amounts of money paid to outside attorneys during the year 1890 for assisting the Attorney General in State legal business, made the following report:

*To the Honorable the Senate of the State of Michigan:*

We, the undersigned committee, appointed by the President of your honorable body, by virtue of a resolution passed on the 13th day of February, 1891, “to ascertain and report to the Senate the amount of money paid to outside attorneys during the year 1890 to assist the Attorney General,” would respectfully report: That we have examined and ascertained the amount of money allowed and the bills audited by Board of State Auditors during the said year 1890; and that we find that the amount allowed and paid outside attorneys to do the work of the Attorney General, during the year 1890 for fees, is \$9,546.80, and the amount allowed and paid out for the expenses of said outside attorneys, during the period aforesaid, is \$1,154.53, making a total amount allowed by the Board of State Auditors for fees and expenses for such attorneys for the year 1890, \$10,701.33.

(The above is exclusive of the amount allowed prosecuting attorneys.)

Your committee further find that the usual rate paid to such attorneys has been from \$20 to \$25 per day and expenses. In some cases \$50 per day and expenses have been allowed. In other cases your committee are unable to tell from the bills rendered and audited what the rate per diem was; but judging from the size of the bill and dates given, conclude the amount paid must have been from \$50 to \$100 per day.

Your committee further find and report that a good per cent of the above amount that is given as expenses includes stenographer's fees, quite a per cent of which was at the rate of \$5 per day.

We would further report that large sums of money have been expended for outside help by some of the State institutions of the State of Michigan, but as such bills are paid by the local boards, out of State moneys, your committee have been unable to ascertain the amount so expended. We have ascertained, however, but without the exact date, and report that in addition to the above amounts expended through the Board of State Auditors, there was paid out by the board of managers of the State House

of Correction and Reformatory at Ionia, to Smith & Stevens and Eggleston & McBride, et al., attorneys in the case of Chris. Johnson vs. Erwin C. Watkins, warden for the State House of Correction and Reformatory at Ionia, the sum of \$2,500 for services, and the sum of \$279.51 for expenses; said sums making a total of \$2,779.51 attorney fees and expenses in the case of Chris. Johnson vs. Erwin C. Watkins; which said sum, together with the sum allowed by the Board of State Auditors, as ascertained by us, make the following:

|  |             |
|--|-------------|
| Total paid out to outside attorneys for attorney fees, to assist the Attorney General, or to do the work that belongs to that department ..... | \$12,046 80 |
| For expenses for such attorneys .....  | 1,434 04    |
| Total fees and expenses allowed and paid out to outside attorneys .....  | \$13,480 84 |

This does not embrace the entire expense for 1890, but it is as near as your committee can get to the amount without making expense to the State for traveling fees and hotel bills.

Schedules of said several amounts of attorney fees and expense accounts are hereto attached and made a part of this report, and reference is made thereto for greater certainty.

Respectfully submitted,

C. W. WISNER,  
FRANK SMITH,  
B. C. MORSE.

#### No. 1.

*To Moses Taggart:*

Cases vs. the Board of Supervisors of Midland and Allegan counties.

|                |          |
|----------------|----------|
| Services ..... | \$95 00  |
| Expenses ..... | 9 35     |
| Total .....    | \$104 35 |

Allowed by the Board of State Auditors January 29, 1890.

#### No. 2.

*To Atkinson, Carpenter, Brooks & Haigh:*

State of Michigan vs. D., G. H. & M. R. R. Co., and Wellman vs. Chicago & Grand Trunk. Preparing briefs and argument before the Supreme Court as per agreement with the Commissioner of Railroads and Attorney General.

|                |          |
|----------------|----------|
| Fees .....     | \$500 00 |
| Expenses ..... | 53 60    |
| Total .....    | \$553 60 |

Allowed by the Board of State Auditors February 26, 1890.

## No. 3.

*To Moses Taggart:*

Services in railroad cases. Usual rates \$20 per day in office, \$25 a day and expenses when away from home.

|                                       |            |
|---------------------------------------|------------|
| Total services to date .....          | \$1,645 00 |
| Disbursements in the above case ..... | 140 99     |
| Total .....                           | \$1,785 99 |

Allowed by Board of State Auditors March 31, 1890.

## No. 4.

*To Butterfield & Keeney:*

On State cases. Usual fees \$25 per day and expenses.

|                |          |
|----------------|----------|
| Services ..... | \$500 00 |
| Expenses ..... | 40 99    |
| Total .....    | \$540 99 |

Allowed by Board of State Auditors May 28, 1890.

## No. 5.

*To Moses Taggart:*

State of Michigan vs. Sparrow, et. al.

|                |          |
|----------------|----------|
| Services ..... | \$325 00 |
| Expenses ..... | 22 98    |
| Total .....    | \$347 98 |

Allowed by Board of State Auditors June 25, 1890.

## No. 6.

*To Atkinson, Carpenter, Brooks & Haigh:*

Second brief and re-argument in the case of Wellman vs. Grand Trunk R. R. Co.

|                |          |
|----------------|----------|
| Services ..... | \$500 00 |
| Expenses ..... | 73 70    |
| Total .....    | \$573 70 |

Allowed by the Board of State Auditors September 24, 1890.

## No. 7.

*To Moses Taggart:*

State of Michigan vs. R. R. Companies.

|                |          |
|----------------|----------|
| Services ..... | \$280 00 |
| Expenses ..... | 44 94    |
| Total .....    | \$324 94 |

Allowed by the Board of State Auditors September 24, 1890.

## No. 8.

*To Moses Taggart:*

Cases vs. Midland county.

|   |                 |
|---|-----------------|
| Total for services .....                      | \$717 50        |
| Disbursements in the above case in 1890 ..... | 91 83           |
| Total .....                                   | <u>\$809 33</u> |

Allowed by the Board of State Auditors November 26, 1890.

## No. 9.

*To Edward Bacon:*

Auditor General vs. L. C. M. R. R., and Hackley vs. Mack. Services rendered from 1883 to 1890.

|                      |                   |
|----------------------|-------------------|
| Total services ..... | \$1,512 00        |
| Total expenses ..... | 90 40             |
| Total .....          | <u>\$1,602 40</u> |

Allowed by the Board of State Auditors November 26, 1890.

## No. 10.

*To Atkinson, Carpenter, Brooks & Haigh:*

For services in preparing opinion as to the legal status of certain railroads in the State of Michigan, \$500.00.

Allowed by the Board of State Auditors December 13, 1890.

## No. 11.

*To Britton & Gray:*

In land cases.

|                |                 |
|----------------|-----------------|
| Services ..... | \$500 00        |
| Expenses ..... | 375 00          |
| Total .....    | <u>\$875 00</u> |

Allowed December 21, 1890, by the Board of State Auditors.

## No. 12.

*To Moses Taggart:*

Services in case of State vs. Sparrow, and three R. R. cases.

|                |                 |
|----------------|-----------------|
| Services ..... | \$919 00        |
| Expenses ..... | 74 33           |
| Total .....    | <u>\$993 33</u> |

Allowed by the Board of State Auditors December 31, 1890.

## No. 13.

*To Butterfield & Keeney:*

In State cases at \$25 per day and expenses.

|                |                   |
|----------------|-------------------|
| Services ..... | \$1,123 30        |
| Expenses ..... | 112 17            |
| Total .....    | <u>\$1,235 47</u> |

Allowed by the Board of State Auditors December 31, 1890.

## No. 14.

*To Messrs. Smith, Stevens, Eggleston & McBride, et. al.:*

Attorney fees in the case of Chris. Johnson vs. Erwin C. Watkins,  
Warden of the State House of Correction and Reformatory at Ionia.

|                        |                   |
|------------------------|-------------------|
| To attorney fees ..... | \$2,500 00        |
| To expenses .....      | 279 51            |
| Total .....            | <u>\$2,779 51</u> |

Allowed by the Board of Managers of the State House of Correction  
and Reformatory at Ionia. Exact date not ascertained.

## No. 15.

*To Austin Blair:*

State vs. Sparrow, *et al.*

For services in case of State vs. Sparrow.

|  |                 |
|--|-----------------|
| One day at Jackson and two days at Lansing ..... | \$150 00        |
| Expenses at Lansing .....                        | 5 50            |
| Total .....                                      | <u>\$155 50</u> |

Allowed by the Board of State Auditors September 24, 1890.

## No. 16.

*Cahill & Ostrander:*

On R. R. cases with Taggart.

|                  |                 |
|------------------|-----------------|
| Total fees ..... | \$280 00        |
| Expenses .....   | 19 75           |
| Total .....      | <u>\$299 75</u> |

Allowed April 30, 1890, by the Board of State Auditors.

Report accepted, and

On motion of Mr. Wisner,

The report and attached schedules were ordered spread on the Journal."

In line with the report, a joint resolution was introduced and passed,  
and submitted to the people at the April election in 1891, to increase the

Attorney General's salary to \$2,500, and in a line with my recommendation a bill was introduced amending the law relative to the prosecuting attorneys coming to the Supreme Court, providing that they should not come except upon special request of the Attorney General.

A bill was also introduced making an appropriation for the salary of the Attorney General and for clerk hire in his department, and expressly providing that the work in the department should be done by the Attorney General or under his supervision, also that no extra help should be hired except at the request of the Attorney General, on the written consent of the Governor. After the election a canvass was held and the Board of State Canvassers reported that the constitutional amendment was adopted, and thereupon the Legislature passed the bills above referred to, and during the following three years and over the Attorney General devoted his entire time to the duties of the office, receiving the salary as fixed by the resolution. On January 30, 1894, the Governor of the State employed attorneys and commenced a mandamus proceeding against the then existing Board of State Canvassers to recanvass the votes on the amendment to the salary of the Attorney General in 1891, and something over ninety days after the proceedings were commenced the Supreme Court ordered a recanvass, and on such recanvass it was reported that the amendment was lost by 403 votes. Since that time the salary has been paid at \$800 per annum.

The law requiring the work to be done by the Attorney General or under his supervision and forbidding extra help is in full force and effect, also the law throwing into the Attorney General's office the work previously done by the prosecuting attorneys of the various counties concerning criminal cases.

It would seem almost unnecessary to urge upon your honorable body that the State of Michigan cannot expect nor hope to have its legal work done for \$800 a year, as the history of the office shows that it has not and in all human probability will not be done. The State of Michigan needs a man well equipped in the law constantly in the Attorney General's office, with authority to employ sufficient help to promptly and carefully look after all of the business of the State.

It is unnecessary to pay a large salary, but it is necessary to pay a salary large enough to support a public officer and take care of his necessary expenses while in the discharge of his duties. If a person is to hold a public office simply for the honor which he may get out of it, probably a small salary would suffice, but if he is to be a servant of the people and do the necessary hard labor which devolves upon a man who fills this office under the present existing circumstances, he should have a reasonable compensation.

The theory that a man who is elected to an office will do all the work and devote all of his time to the office, and at the same time be serving the people at a daily loss, is well enough as a theory, but in actual practice it is a false proposition, and the records and files in this office will conclusively prove that no man at the rate of \$800 a year has ever spent his entire time for the State of Michigan filling the office of Attorney General. I do not claim that they have not earned all they have received, for I believe they have and many times more. The office has been filled by very able men, and those who were desirous of doing as nearly as possible their duty to the people of the State, but the general rule has been to come to Lansing once or twice a

month, have the heads of the other departments gather together their work and questions, and then submit them, have them answered as hurriedly as possible, and then the Attorney General would return to his usual place of business.

The salary of the Attorney General of the State of Michigan should be at least \$4,000, or equal to that paid the Governor of the State. A man who is not able to make \$4,000 a year in his practice is not fit to fill the office, and there is no reason why the people of the State of Michigan should ask a man to do the legal business of the State for less money than he can make by transacting business for private parties. The people cannot expect a great deal for nothing, and the longer they work upon the theory that a public officer with a compensation so small that it is absolutely necessary for him to conduct other business in order to earn a living, will discharge his duties, the more money they will lose. It cannot be successfully contradicted that the State has lost more money by neglect through this office in the past forty years in the one item of land grants alone, than would hire ten Attorney Generals at a princely salary for fifty years to come.

The Attorney General who takes charge of the office January 1, 1895, will find enough work in this department to take his entire time, and the people cannot reasonably expect that he will spend that time for \$2.19 per day.

The Legislature at their next session should submit to the people a proposition to increase the salary of the Attorney General to a reasonable amount. It should in good conscience be at least \$4,000 per year. Possibly the people would not vote that amount. Somewhere between \$2,500 and \$4,000 should be fixed upon, and it should be submitted at the April election. The resolution should be passed early in the session so that the matter can be brought to the attention of the people, and it does seem to me that if the people are informed that the work which is done in this office were done for private individuals every year, it would cost at least from \$8,000 to \$10,000, they would not hesitate to give the Attorney General a reasonable salary.

It will not do to go back to the old plan of farming out the work, nor will it do to repeal the laws and have the prosecuting attorneys of the several counties charge up to the people of the State from \$4,000 to \$5,000 a year for doing work which should be done in this department.

I believe that if the matter were presented to the people of the State, a proposition giving the Attorney General a reasonable salary would be carried by a large majority, and I do not believe that any honest legislator would hesitate for one moment to give such a resolution his earnest support, and with three years and a half experience in this office, I give it as my opinion that such a course would save more than twice the salary every year to the taxpayers of the State.

Respectfully submitted,

ADOLPHUS A. ELLIS,

*Attorney General.*

## SCHEDULE A.

---

This schedule contains a full statement of all criminal cases brought to the Supreme Court on exception, writ of error, *certiorari* and *habeas corpus*, whether disposed of or pending, in which the Attorney General has appeared, or which are of general interest to those entrusted with the administration of the criminal laws of the State.

The People vs. William Palmer. Error to Saginaw. Murder. Reversed and new trial granted.

The respondent was convicted of murder in the second degree. The offense charged was shooting and killing his brother. The testimony on the part of the people tended to show that on the day of the shooting the respondent and his brother had some words of dispute in a saloon, and that the respondent left the saloon, deceased remaining there. That the respondent proceeded to arm himself with a double-barreled shotgun, and returned to the saloon. The deceased had in the mean time armed himself with a revolver. The respondent stepped up to the door of a screen which divided the front from the rear portion of the saloon, and called out to his brother: "Come up! Come up!" The deceased stepped forward, and the respondent fired, and the shot resulted in fatally wounding the deceased. There was testimony also tending to show that the deceased fired upon the respondent before the respondent fired at him. There was some testimony on the part of the respondent that he procured the shotgun to go hunting; that he had no intention of using it against his brother, and that when he called out in the manner in which he did, "Come up! Come up!" he did so in a bantering way.

There was evidence showing that deceased had made threats against the respondent; that he threatened to shoot him if he ever crossed his path. These were made by the deceased on the day of the shooting, and after he had armed himself with the revolver. Respondent's counsel asked an instruction as follows: "In considering which of the brothers, Albert or William, was the aggressor, and the probable character of the assault, you should carefully weigh and consider the previous threats made by Albert, and the purchase and exhibition of the loaded revolver by him, as a person who has made threats against the life of another, and purchased and loaded a revolver a few minutes before, is more likely to make an assault than a person who has made no threats." *Held*, that this request should have been given, or its substance covered by the general charge.

There was evidence from which the jury might have found that the respondent had no malice towards the deceased, but that, after being

attacked by deceased, he, in the heat of passion, and in the excitement and confusion caused by the assault, fired the fatal shot. *Held*, that the court should have defined the offense of manslaughter, and instructed the jury that, if the testimony warranted it, they might convict of the lesser offense.

Reported in 96 Mich., 580; 55 N. W. Rep. 994.

*People vs. Charles E. Keefer.* Error to Hillsdale. Violation of local option law. Reversed and new trial granted.

Respondent was convicted under the local option law. The jury brought in a general verdict. The information contained seven counts. The first count alleged that respondent "did then and there run a saloon and bar, and at said saloon and bar did then and there sell and furnish to Frank L. Fellhauer and divers other persons spirituous and intoxicating liquors, \* \* \* and did then and there knowingly keep a saloon, where intoxicating liquors \* \* \* were sold and furnished as a beverage. The second, third and fifth counts alleged that respondent "did then and there sell and furnish to Frank L. Fellhauer" a certain quantity of other intoxicating liquors, etc. The fourth count alleged that he "did then and there keep a saloon and bar, and did then and there sell and furnish to Frank L. Fellhauer and divers other persons," etc. The sixth count alleged that he "did then and there sell and furnish to Frank L. Fellhauer and divers other persons" intoxicating liquors; the seventh count, that he did then and there keep a saloon, where liquors were stored for sale and sold and furnished.

The first count of the information was held bad for duplicity.

The second, third, fifth and seventh counts were held good.

The information having several counts, some of them charging the sale of intoxicating liquors, and others charging the keeping of a saloon for the sale of liquors, it was held that the prosecution should have been compelled to elect on which counts they would proceed.

A number of questions arose during the selection of the jury, and the court made substantially the following rulings:

1. On the trial of an offense against the local option law, a juror is not disqualified by reason of the fact that he states on his examination that he voted for the law, or that he is in favor of it and its enforcement, or is in favor of prohibition.

2. Nor is a juror disqualified because he states on his examination that he knows a local option election was held, and knows the result of it was to supersede the general law respecting the sale of intoxicating liquors.

3. A juror who, on his examination, stated that he knew defendant, supposed he ran a saloon, understood from what he heard that he had been running a certain length of time, and from what he heard supposed that he sold intoxicating liquors there, should have been excluded.

4. Refusal to permit jurors, on their examination, to be asked how they would give their verdict as between the people and defendant if the evidence was equally balanced, was error.

Reported in 97 Mich. 15, 56 N. W. Rep. 105.

*The People vs. Olaf Johnson.* Error to Superior Court of Grand Rapids. Cause of action not given. Writ dismissed on written stipulation.

The People vs. Margaret C. Cook. Error to Superior Court of Grand Rapids. Soliciting females to enter house of ill fame. Reversed and new trial granted.

Respondent was convicted in the superior court of Grand Rapids, under an information charging that she did solicit and induce Emma Hachn and Lillie Pale, females, to enter a house of ill fame, situate at Woodside, resorted to for the purpose of prostitution and lewdness, for the purpose of becoming prostitutes. It appeared that at the term of court at which the respondent was tried, and before her trial came on, one Frank Smith had been prosecuted and convicted under an information charging that he did solicit and induce one Anna Nelson, a female, to enter a house of ill fame in the city of Grand Rapids, resorted to for the purpose of prostitution and lewdness, for the purpose of becoming a prostitute; and that Lillie Pale, named in the information against respondent, was a witness against said Frank Smith; and also that said Anna Nelson was to be used as a witness against the respondent, her name being indorsed on the information for that purpose. The same panel of jurors remained during the term of court, and several of them who served on the panel in the case against Frank Smith were called in the case against the respondent. Counsel for respondent examined these jurors on *voir dire*. They were asked if they served as jurors in the case of People vs. Frank Smith and heard Lillie Pale testify. This was answered in the affirmative. Counsel then asked: "Did you, from the evidence in that case, form any opinion as to her character for virtue and chastity?" The answer, under objection from the prosecution, was excluded. Five jurors who sat in the case of Smith remained on the panel in the present case. Lillie Pale was called as a witness for the prosecution, and testified substantially that on Sunday, December 12, 1892, the respondent asked her to go to Woodville, into a house of prostitution, to become a prostitute. On the next day she saw the respondent again, who gave her fifty cents to pay her fare and that of Anna Nelson on the train to go there, the respondent at the same time telling her that other girls were going, and to go to the depot, but not to recognize her there. The witness also testified that before that time she had had illicit intercourse with a man for pay. This was only a few days before the respondent solicited her to go to Woodville. The testimony tended to show that the house to which the respondent solicited these girls to go was a new one, but the witness Lillie Pale testified that the respondent said it was a sporting house. The statute under which the prosecution was had reads: "Every person who shall keep a house of ill-fame, resorted to for the purpose of prostitution or lewdness, and every person who shall solicit or in any manner induce a female to enter such house for the purpose of becoming a prostitute, or shall by force, fraud, deceit, or in any like manner procure a female to enter such house for the purpose of prostitution or of becoming a prostitute, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the State prison not more than five years, or in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court." 3 Howell Statutes, section 9286.

It was contended by counsel for respondent that the conviction should be set aside for the reasons: (1) That there was no evidence that the house to which these females were asked to go had ever been resorted to

for the purpose of prostitution or lewdness. (2) That the words used in the statute, "for the purpose of becoming a prostitute," implies a change of state or condition, and that these females were shown to have already become prostitutes before being solicited. (3) That the testimony did not show that the respondent solicited Lillie Pale to go to this house, and that what was said amounted to nothing more than an inquiry if she would go to a sporting house. (4) That the court erred in permitting the jurors who had formed part of the panel on the trial of Frank Smith to sit in this case.

*Held*, 1. That it is not a necessary element of the offense that the house should already have been resorted to for the purpose of prostitution by other females. The gravamen of the offense is in soliciting females to enter such house for the purpose of becoming prostitutes; that is, a house designed and kept for that purpose, whether it had already been resorted to by others for that purpose or not.

2. That a person who solicits a female, who is at the time a prostitute, and inmate of a house of ill fame, to become an inmate of another such house, is not guilty of a violation of the above statute.

The other questions were not considered by the court.

Reported in 96 Mich., 368; 55 N. W. Rep., 980.

The People vs. John Abbott. Error to Superior Court of Grand Rapids. Rape. Reversed and new trial granted.

Respondent was convicted of the crime of rape upon one Annie Punderson, a girl of ten years of age. Several errors were assigned:

1. That the court erred in excluding the testimony of the girl, Annie Punderson, as to her having had carnal intercourse with other men prior to the time of the alleged offense. The statute provides: "If any person shall ravish and carnally know any female of the age of fourteen years or more, by force and against her will, or shall unlawfully and carnally know and abuse any female child under the age of fourteen years, he shall be punished by imprisonment in the State Prison for life or for any term of years; and such carnal knowledge shall be deemed complete upon proof of penetration only." 3 Howell's Statutes, section 9094. *Held*, that the court was not in error in excluding the evidence, as it was no less an offense, within the terms of the statute, if the child had had intercourse with other men prior to that time. Neither was it competent as bearing upon the girl's credibility, as she could not be impeached by her acts of intercourse.

2. It was claimed that the court was in error in allowing the girl to state that the respondent had had intercourse with her prior to the date of the offense charged. *Held*, that while such testimony was not admissible for the purpose of making it more probable that the offense charged had been committed, yet it was admissible for the purpose of showing the relation of the parties and the opportunity offered the respondent of meeting her.

3. It was charged that the court erred in permitting the prosecutor to ask one of the witnesses for the people, who was called on rebuttal, what the reputation of Mrs. Van was for morality, decency, virtue, truth and veracity in that neighborhood? And the same question was asked in reference to Evelyn Merty and Mary Gardner, with the permission of the court. These parties had been called as witnesses for the defense, and the question was asked for the purpose of impeaching them. The witness answered

that the reputation of these parties was bad. The court attempted to correct the admission of these questions by saying in the charge to the jury that in considering the question of the impeachment of these witnesses they should leave out that part of the questions and answers which related to their reputation for morality, decency and virtue, and consider only that portion relating to their truth and veracity. *Held*, that in permitting these questions to be answered there was manifest error, and the attempt to cure it in the charge did not remove the effect it probably had on the jury.

4. Under Howell's Statutes, section 9428, which provides that upon an indictment for any offense consisting of different degrees the jury may find the accused not guilty of the offense in the degree charged in the indictment, and may find accused guilty of any degree of such offense inferior to that charged, or of an attempt to commit such offense, the court, on trial of an information for rape, which also charged an assault with intent to commit rape, and an assault and battery, should charge what constitutes the lesser offenses, and that defendant can be convicted of either of them.

Reported in 97 Mich., 484; 56 N. W. Rep., 862.

The People vs. Latin Skutt. Error to Clinton. Incest. Affirmed.

The respondent was convicted of incest with his own daughter, sixteen years of age. Four errors were assigned. The crime was charged to have been committed July 30, 1892.

Acts of sexual intercourse between the respondent and his daughter were shown by the evidence at various times for a period of about eight years previous to the commission of the crime alleged; also during that time one act of familiarity was shown, which was of such a character as to lead to the conclusion that its purpose was for sexual intercourse. *Held*, that the evidence was properly admitted. Following *People vs. Jenness*, 5 Mich. 305, 319. Overruling *People vs. Hendrickson*, 53 Mich. 525.

The prosecuting attorney, in his argument to the jury, used the following language: "It is an undisputed fact that this sort of conduct has been going on between the defendant and his daughter from the time she was eight years old down to the time of the commission of the crime for which he is now on trial." Several witnesses had testified to acts of sexual intercourse during the period covered. No evidence was introduced on the part of the respondent. No attempt was made to impeach the witnesses for the prosecution. *Held*, that the language was not error.

In his charge to the jury the court used this language: "In this case, upon the argument by counsel on both sides, it has been conceded that about the time and place charged in the information the defendant and the complaining witness, his daughter, had sexual intercourse. It is claimed upon the part of the people that it was under such circumstances as make him guilty of the offense charged. It is claimed upon the part of the defendant that, while the intercourse took place, it was not under such circumstances as make him guilty under this charge, but constituted the offense of rape." This statement by the court was not challenged by the respondent's counsel upon the trial, nor did he state in his brief that the statement was not correct. *Held*, that such statements in the instructions of the court will be presumed to have been correct where the record does not show that they were contradicted by counsel.

The respondent's counsel requested an instruction that under the evidence, if any offense were committed, it was rape, and not incest, and that the verdict should be not guilty. This instruction was refused, and the court instructed the jury that, if the intercourse took place because of threats made at the time or previously, the respondent was guilty of rape, and they should acquit. *Held*, that it was fairly and properly left to the jury to determine whether the intercourse took place under such circumstances as to constitute the crime of rape.

Reported in 96 Mich., 449, 56 N. W. Rep., 11.

The People vs. Edward Troy. Error to Superior Court of Grand Rapids. Deadly assault. Reversed and new trial granted.

Respondent was informed against, and convicted, under section 9122a, Howell's Statutes, which reads: "Any person who shall assault another with intent to do great bodily harm, less than the crime of murder, shall be punished by imprisonment in the State prison, not more than ten years, or by fine not exceeding eight hundred dollars, or by both, in the discretion of the court." It appeared on the trial that on the night of May 23, 1892, two young men, by name of Flanders and Ottobien, were engaged in a street fight. One of the parties called for help, when a police officer ran to the place, and sought to arrest the two. Ottobien broke away from the officer, and while the latter was engaged in securing Flanders, he was struck on the head by a stone thrown by a person whom the officer afterwards claimed to recognize as the respondent. Flanders was complained against for the offense of resisting an officer, and the respondent complained against, and convicted, under the statute above quoted. Flanders' trial came on first in the recorder's court of Grand Rapids, and he was found guilty by the jury. At the same term, respondent was brought to trial, and seven of the jurors who sat in Flanders' case were permitted, under objection, to sit in the case against respondent. It was claimed by counsel for respondent that the verdict should be set aside for the reasons (1) that the act under which the conviction was had is unconstitutional and void; (2) that the court erred in permitting the jurors who found Flanders guilty to sit in the case against respondent; (3) that the court erred in its charge to the jury on the question of alibi, claimed as a defense in the case.

*Held*, that the statute was not unconstitutional because it does not contain any definition of an assault with intent to do great bodily harm, less than the crime of murder.

*Held*, further, that it was error to permit several jurors who had at the same term of court served on the trial of Flanders for resisting such officer, and returned a verdict of guilty, to sit as jurors on trial of defendant.

Reported in 96 Mich., 530; 56 N. W. Rep., 102.

The People vs. William Curley. Error to Recorder's Court of Detroit. Breaking and entering house in the night time. Affirmed.

Respondent was convicted in the recorder's court of Detroit of the crime of breaking and entering the dwelling house of Julius Weil, in the city of

Detroit, in the night time. On appeal it was insisted that the prosecution failed to prove that the offense was committed in the county of Wayne. The testimony showed that the house broken into was situated at 50½ Jones street, in the city of Detroit. The court in which the conviction was had sat in the city of Detroit, and was styled the "Recorder's Court of the City of Detroit."

*Held*, that the court could take judicial notice, as to a crime proven in the city, that the city was in Wayne county.

It was also objected that it did not appear that the house was closed up before the breaking. Joseph Weil, the son of the owner of the house, testified that he returned at half-past ten; that the house was not open at that time; that the side door was closed,—he closed it himself and bolted it. He was asked about a certain window that was found open at the time the burglary was committed, as to whether that was closed, and stated that it was closed; that he knew because he went through the house. Mr. Julius Weil, the owner of the premises returned, and found the window in question open, the side door unbolted and open, and the respondent in the house. *Held*, that the evidence was abundantly sufficient to show breaking.

It was contended that there was nothing to show an intent to commit larceny. It was shown that a bundle of clothing was collected, belonging to the inmates of the house, and placed outside the door; that the respondent was surprised in the house, and fled to escape arrest, but was overtaken by Mr. Weil, and turned over to the officers.

*Held*, that the proof sufficiently showed an intent to commit larceny. Reported in 58 N. W. Rep., 68.

The People vs. James Pitton. Error to Superior Court of Grand Rapids. Violation of liquor law. Affirmed on default.

The People vs. Jesse Carter. Error to Berrien. Manslaughter. Affirmed.

The defendant appealed from a conviction of manslaughter. One McCoy was attacked by a man named Cousins, in a saloon, for wearing some kind of a political badge, obnoxious to Cousins. Blows followed words, Cousins being knocked down once or twice by McCoy, who acted upon the defensive. During the melee Carter, the defendant, ran up and struck McCoy, knocking him down. According to one or more witnesses, Carter struck McCoy twice. There was conflicting evidence as to McCoy's being kicked by Cousins after he was down. At all events, the blow from Carter, or a kick immediately after by Cousins, dislocated the vertebrae of his neck, and killed him. There was no testimony showing preconcert of action upon the part of Cousins and Carter. In his charge, the trial judge instructed the jury as follows: "If this claim be true, the respondent cannot be convicted unless the blow given by him was the direct cause of McCoy's death, and such blow was not inflicted under the belief that it was reasonably necessary to protect himself from bodily harm; but, gentlemen, if Cousins and McCoy were having an altercation, and Carter, while Cousins and McCoy were scuffling with each other, and knowing that the scuffle between the two had not ended, approached McCoy, and struck him without provocation, and so struck him for the purpose of assisting Cousins to

whip McCoy, and if such blow knocked McCoy to the floor, and put McCoy's body in such a position that he was helpless to protect himself from Cousins, and if, while McCoy was in such helpless condition, Cousins immediately kicked him, then, gentlemen, such act upon the respondent's part was unlawful, and in such case he is guilty of manslaughter, if the direct cause of McCoy's death was either the blow given by the respondent, or the kick given by Cousins while McCoy was upon the floor, or both combined." Error was assigned upon this instruction. *Held*, that the court committed no error in this.

In a supplemental brief, presented at the hearing, some questions were raised, which had no assignments of error to support them. They were based upon an alleged failure of the trial judge to give instructions to which counsel for the defendant conceived him to have been entitled, upon the subject of self-defense and reasonable doubt. It was urged that a verdict should not be allowed to stand if the record shows that the judge did not fully explain to the jury the questions necessary to an understanding of the case. Counsel who tried the case did not deem it necessary to call the court's attention to these matters by requests to charge, nor did he assign error upon them. Both were alluded to in the charge, and the instructions were correct as far as they went. *Held*, that these questions were not entitled to consideration because not raised by the record.

Reported in 96 Mich., 583; 56 N. W. Rep., 79.

The People vs. Albert Taylor. Error to Superior Court of Grand Rapids.  
Prize fighting. Reversed and new trial granted.

The respondent was convicted under an information containing two counts, based upon Howell's Statutes, section 9306, which provides that "any person who shall hereafter be a party to, or engage in a prize fight, or any other fight in the nature of a prize fight, in this State; or who shall aid or abet therein, shall, on conviction thereof, be punished," etc. The first count of the information charged that the respondent, "at the city of Grand Rapids, in the county of Kent, did then and there unlawfully engage in a prize fight with one Edgar Broom, and did then and there fight a prize fight with said Edgar Broom, contrary to the statute." The second count of the information charged that "the said Albert Taylor did then and there engage in a fight in the nature of a prize fight with one Edgar Broom, contrary to the statute." The defendant moved to quash the information, on the ground that no offense was charged therein, and the refusal to quash the information was assigned as error.

It was contended that prize fighting is not an offense at the common law, and that, where a statute creates a new offense, it is necessary to set out the facts and circumstances, so that the court may judge whether the act charged comes within the prohibition of the statute. *Held*, that the information was sufficient, and need not set out the particular facts constituting the offense charged.

It was objected that so much of the act as seeks to punish for engaging in a fight in the nature of a prize fight, was unconstitutional, as the title was not broad enough to include this provision. The title is "An act to prohibit, discourage and punish prize fighting in the State of Michigan."

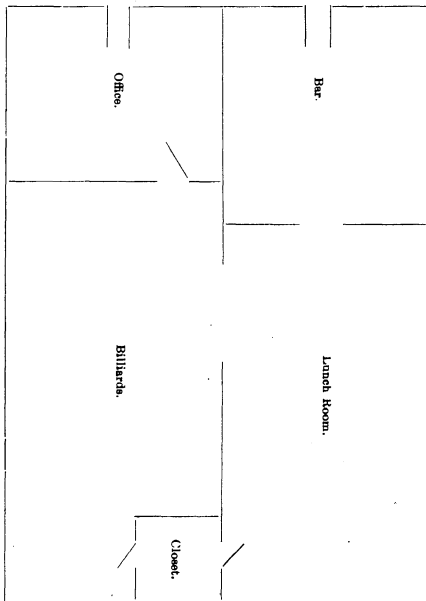
*Held*, that the provision in relation to engaging in a fight in the nature of a prize fight is not open to this objection.

*Held further*, that to constitute prize fighting there must be an expectation of reward to be gained by the contest or competition, either to be won from the contestant or to be otherwise awarded, and there must be an intent to inflict some degree of bodily harm on the contestant.

Reported in 96 Mich., 576; 56 N. W. Rep., 27.

The People vs. John B. Hughes. Exception from Superior Court of Grand Rapids. Violation of liquor law. Affirmed.

The defendant was convicted of an infraction of the liquor law by keeping his saloon open at night unlawfully. The following diagram shows the situation of the premises:



The several rooms were all owned and managed by the defendant, though the lunch counter was rented to another, and operated by him upon his own account. The room was, however, a part of the saloon. Between this and the billiard room was an open archway several feet wide, without

doors. This was provided with a canvas curtain, which buttoned on the sides and at the floor, and which defendant claimed was closed on the night in question. The closet in the rear was used from both rooms, defendant claiming it to have been locked on this occasion.

The only question in the case was whether the court erred in instructing the jury that the billiard room was a part of the saloon, so that it was necessary that it be closed. The court said the trial judge was right in so determining.

Counsel for defendant asked that the prosecution call as a witness one Miller, who, they asserted, was present at the transaction. The court declined to require this. But the witness was sworn for the defendant, and testified in the case, and the court said that from the record they were unable to discover that the defendant suffered any injury from the ruling.

Reported in 97 Mich., 543; 56 N. W. Rep., 942.

**The People vs. Julius Dupree. Error to Saginaw. Burglary. Affirmed.**

The respondent was convicted of burglary under section 9132, *Howell's Statutes*. The evidence on the part of the people tended to show that the owner of the dwelling house occupied the front room for a shoe shop and the rear and overhead part as a dwelling. The shop was upon the ground floor and had two windows, each about four feet from the ground. These windows had double sash, were without pulley weights, were fastened when raised, and bolted when down, by stops operated by springs. When the windows were closed the springs threw the bolts into the slots in the cases, so that the window could not be raised without drawing the bolt. One of these windows was opened during the night of October 8 and three pairs of shoes were stolen. The owner closed the shades on the night of the 6th, and did not notice that the window was raised even an eighth of an inch. On the morning of the 9th, on opening his shop, he found the window raised about 1½ feet. The respondent called at the house on October 6, between noon and 2 P. M., and asked for dinner. He asked permission to step into the shoe shop for the purpose of changing his pantaloons. This request was granted. The window was not broken. If the bolt was in the slot the window could have been raised from the inside only. On Monday following the burglary respondent had in his possession, and offered for sale, a pair of shoes alleged to have been taken upon the night of October 8. On the following Wednesday he sold a pair of shoes which were identified as one of three pairs stolen on October 8. The complaining witness testified that he believed that the window was unfastened and raised on October 6 from the inside, and something placed under the sash so as to keep the bolt from entering the slot. The owner left the shop about the time it was necessary to light the lamps to see and did not return to it till the next morning. No testimony was introduced on the part of the respondent. His counsel moved the court to discharge the respondent for the reason that the crime was not established against him. This the court refused.

It was contended on behalf of the respondent: (1) That no breaking or entering in the night time was established. (2) That this shop was not a part of the dwelling house. (3) That if the window was partially raised on October 6, and was further raised on the night of the 8th, the crime was not established.

The record did not contain all the evidence bearing upon the question whether the breaking and entering were in the night time. It did not clearly appear that the complaining witness did not testify as to the time he entered his shop in the morning. It was stated in the people's brief that he rose about break of day, and before sunrise, and found the window open and the shoes gone. *Held*, that it was for the jury to determine whether the breaking and entering were done in the night time or after daylight.

The building was a dwelling house, and occupied as such. The owner used one room as a shoe shop. This room was connected with the rest of the house. *Held*, to be a part of the dwelling.

The theory of the prosecution was that the respondent when in the shop, either on the 6th or 7th of October (the court in its charge referred to the date as Friday, October 7), raised the window just enough to prevent the bolt from entering the slot, and there was evidence to sustain it. It was insisted that even if this was so, and the respondent raised the window on the following night, it did not establish the crime of burglary.

*Held*, that the fact that defendant slightly raised the window in the day time, so that the bolt which fastened it down would not be effectual, would not divest his subsequent breaking and entering through the window in the night time of the character of burglary.

An objection was made to the charge that there was no evidence to sustain it. Overruled, as the record did not set forth the evidence.

Reported in 98 Mich., 26; 56 N. W. Rep., 1046.

The People vs. John Sykes. Error to Ionia. Violation of liquor law. Affirmed.

There was no disputed question of fact in this case. May 2, 1892, one Michael Snyder paid to the county treasurer of Ionia county \$500 as a tax, as required by law, for the purpose of carrying on the business at retail of selling spirituous liquors. He gave the required bond. He continued in business until August 26, 1892, when he died, leaving his wife, Mary Snyder, and two children, surviving him. His wife was appointed administratrix of his estate, consisting of about \$300 of personal property. After her appointment as administratrix, Mrs. Snyder continued to carry on the business, and employed the respondent to assist her therein. December 29, 1892, both were arrested charged with violating the liquor law, in that they were carrying on the business without having paid the tax required by law. They took separate trials, and the respondent, under the direction of the court, was found guilty.

But a single question was involved, viz.: had the administratrix of the estate the right to continue the business without again paying the tax required by Act No. 313, Public Acts of 1887?

*Held*, that the right to carry on the business is in the nature of a personal license, and an administratrix cannot continue a business established by her decedent under a payment of the tax by him.

Reported in 96 Mich., 452; 56 N. W., Rep. 12.

The People vs. Christopher O'Brien. Error to Recorder's Court of Detroit. Murder. Reversed and new trial granted.

This case was in the Supreme Court at the April term, 1892, and is reported in 52 N. W. Rep., 84. Respondent had been convicted of murder in the second degree, and the case was reversed and sent down for another trial. The second trial had been had, resulting in a conviction of manslaughter. The case came up again upon a writ of error, aided by an ancillary writ of *certiorari*, which brought up the proceedings on the argument of the case before the jury and the ruling of the court thereon, which were not included in the bill of exceptions, but to which the court below made return. It appeared from the affidavit for the writ of *certiorari* and the return thereto that an agreement was made between the prosecuting attorney and counsel for respondent that the case should be submitted to the jury without argument. Counsel claimed a violation of this agreement by the prosecuting attorney, to the prejudice of the respondent. After the testimony had closed, the prosecuting attorney voluntarily suggested to counsel for respondent that the case be submitted to the jury under the charge of the court, without argument. Counsel agreed to this, and the case was adjourned until the next day, when respondent's counsel presented certain requests to charge, and read them to the court. The prosecuting attorney, in response to these requests, with a pretense of answering them, and against the protest of counsel for respondent, then addressed himself to the court and jury, arguing the questions of fact to the jury. Counsel for respondent protested that the case was to be submitted without argument, and excepted to the ruling of the court in permitting this course to be taken. The prosecuting attorney, however, was permitted to proceed, and did proceed, with the argument upon the merits, in which he dwelt to some considerable extent upon the testimony of Dr. Siebert, arguing that his testimony showed conclusively that the respondent was guilty as charged. *Held*, that this conduct on the part of the prosecuting attorney was ground for reversal.

Among other things, the prosecuting attorney said to the jury: "Now, gentlemen of the jury, of course the defense will claim self-defense, and I want you to aid us in the trial of this cause. Pay strict attention to the evidence pro and con. Put yourselves in the manner of jurors and detectives." Respondent's counsel called the attention of the court to the use of this language, and said he would take an exception to the invitation to the jury to act as detectives, in addition to their other duties, when the court responded: "Take an exception." The prosecuting attorney thereupon qualified the statement by adding: "In detecting the evidence, it is your duty as jurors." *Held*, prejudicial error.

The prosecuting attorney's questions were leading and, when objected to, were repeated, and the court itself, it seems, was unable many times to prevent it. The witnesses for the defense were criticised in the presence of the jury. John Luth was asked if he knew the penalty of perjury. The court instructed the prosecuting attorney that he must not say to the witnesses for the defense that they were committing perjury. If they were, he would have a right to contradict them by other testimony. The prosecuting attorney responded that he would take that course, but he knew he was right.

*Held*, that a prosecuting attorney has no right to imply that a witness for defendant is swearing falsely by asking him if he knows the penalty

for perjury. *Held*, further, that the respondent had not had that fair and impartial trial which is guaranteed by the constitution.

Reported 96 Mich., 630; 56 N. W. Rep., 72.

The People vs. Abijah Eaton. Error to Barry. Assault and Battery. Affirmed.

Respondent was convicted of an assault and battery upon L. B. Bently. It appeared that Bently, in company with three other men were in the act of digging holes to set telegraph poles in the highway in front of the farm of defendant. Defendant forbade them doing so, and ordered them to desist, which they refused, whereupon he pushed Bently down a slight embankment. It was not claimed that any serious harm was done him, or that respondent used any more force than necessary to stop the work. It was claimed on the trial that Mr. Bently and his companions represented, and were the employes of, a certain company known as the Barry County Telegraph Association, incorporated under the provisions of chapter 101 of Howell's Statutes, and that they informed respondent that they were erecting a telegraph line along the highway, and were acting for an association, and that the State gave them the right to do so. The articles of association of the company were not filed with the Secretary of State until after the assault complained of, but they had been signed in due form, and were subsequently acknowledged and filed as provided by law. The statutes of this State relating to electric telegraph lines, briefly summarized are as follows: Chapter 100 Howell's Statutes is "An act authorizing any person to construct lines of electric telegraph in the State of Michigan." It is Act No. 4 of the Session Laws of 1847, as amended in 1849 and 1873. Section 1 provides: "That any person or persons may be and they are hereby authorized to construct and maintain lines of electric telegraph, together with all necessary fixtures appurtenant thereto, from point to point upon and along any of the public roads, highways, \* \* \* of this State, or upon or over the land of any individual—the owner of any land through which said telegraph line may pass, and railroad corporation on whose right of way the same may be constructed, having first given consent: *Provided*, That the same shall not in any instance be so constructed as to incommode the public in the use of said roads, highways, railroads or bridges. \* \* \*" Chapter 101, being Act No. 59 of the Session Laws of 1851, as amended in 1863, 1873 and 1875 is, "An act to authorize the formation of telegraph companies." Section 5 provides that: "Such association is authorized to enter upon, and construct and maintain lines of telegraph through, along and upon any of the public roads and highways, or across or under any of the waters within the limits of this State, by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires of such lines: *Provided*, That the same shall not be so constructed as to incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters: *And provided further*, That this act shall not be construed to authorize any such association to injure, deface, tear, cut down or destroy any tree or shrub planted along the margin of any highway in this State, or purposely left there for shade or ornament. \* \* \*" Section 6 provides for the appointment of commissioners by the circuit.

court to assess damages, on the application of any person through whose land said lines shall pass, who shall consider himself aggrieved or damaged thereby.

The principal question in this case was whether these acts conflicted with article 15, section 9, of the constitution, which provides, "The property of no person shall be taken by any corporation for public use without compensation being first made or secured in such manner as may be prescribed by law."

*Held*, that the statute under which Bently and his associates acted was not in conflict with the provisions of the constitution above cited.

*Held further*, that there was nothing in the claim that the articles of association were not filed at the time of the assault, as under chapter 100 any private person may erect telegraph poles along the highway under certain restrictions.

Reported in 59 N. W. Rep., 145.

The People vs. William H. Wade. Error to Hillsdale. Violation of liquor law. Affirmed.

Complaint was made before a justice of the peace, February 11, 1892, charging the respondent with having engaged in the business of selling, and keeping for sale, spirituous and intoxicating liquors, malt, brewed, and fermented liquors, at retail, on February 10, 1892, in the township of Summerset, Hillsdale county, without having paid the tax, and having the receipt and notice therefor posted up in his place of business. He waived examination, and was bound over to the circuit court for trial. The information contained five counts, the first three charging him with selling without payment of the tax or the posting of the receipt, the fourth charging him with the sale of liquors without having filed the bond required by law, and the fifth combining the three allegations. He was convicted. Three objections were made against the validity of the judgment, viz.: (1) That the information charged two separate and distinct offenses, upon one of which he had had no examination, and that the prosecuting attorney should have been required to elect upon which count he would proceed; (2) that the local option law was in force in Hillsdale county at the time of the trial, though the offense was committed and the arrest made several months prior thereto; (3) the failure of the court to grant a new trial was an abuse of judicial discretion.

The law requires three things as conditions precedent to entering upon the business of retailing spirituous and malt liquors,—the execution and filing of a bond duly approved by the proper authorities, the payment of the tax, and the posting of the tax receipt in the place where liquors are to be sold.

*Held*, that it is not to be presumed that county treasurers will violate the law and issue tax receipts until the conditions precedent have been complied with.

The proofs in this case established the fact that the respondent paid no tax, filed no bond, and obtained no receipt. It was admitted that he did none of these things. The charge was that he was unlawfully engaged in the liquor traffic. While he put in no evidence, it appeared that his sole defense was that he did not sell spirituous or malt liquors, but only soft drinks, and that he was not engaged in the liquor

traffic. *Held*, that it was impossible to say that he was prejudiced by the allegation in the information that he had not filed a bond; that errors which cannot possibly create any prejudice to the rights of one charged with crime ought not to, and cannot, operate as a ground for a new trial.

The trial of this case occurred September 15, 1892. Upon the trial, no proof was offered to establish the adoption of local option, nor was the point made that it had been adopted by the people of Hillsdale county. *Held*, that it was too late to raise that question.

The sole point urged as an abuse of judicial discretion in denying a new trial was that the judgment was erroneous because the local option law had been adopted before the trial. Section 1 of the act makes such sales unlawful so long as the resolution of the supervisors after adoption remains unrepealed. Section 2 declares that, after the 1st day of May next following the adoption, the general law shall be suspended and superseded so far as relates to that county.

*Held*, that the suspension of the general liquor law in any county adopting local option, does not repeal the general liquor law, and, after local option is adopted, a person may be convicted for a violation of the general law committed before such adoption.

Reported in 59 N. W. Rep., 438.

The People vs. James Pitton. Error to Superior Court of Grand Rapids. Violation of liquor law. Settled by the parties.

The People vs. Lewis Newton. Error to Oakland. Rape. Reversed and new trial granted.

The defendant appealed from a conviction of rape. William O'Brien was also charged with the same offense, and had pleaded guilty. The offense was perpetrated at the residence of complainant, during the absence of the family, and the men were in the house on the return of the family. O'Brien was captured and detained; the other broke away. Soon after, he came to the door and threatened to shoot Judd Reading if he did not let his partner go. Judd stated that this man was the defendant, Newton. A Mrs. Smith was permitted to testify that a few minutes after the arrest of O'Brien, and after the other man had escaped, but before his return, O'Brien said: "Mrs. Reading, how came I here? Oh, I know; Lewis Newton brought me here." The tendency of this testimony was to establish Newton's identity. It was the statement of a confessed criminal that another had brought him to the place where the offense was committed. *Held*, that it was hearsay, and not admissible upon the theory that it was a part of the *res gestae*.

Reported in 96 Mich., 586; 56 N. W. Rep., 69.

The People vs. Charles H. Shelters. Error to Calhoun. Obtaining money under false pretenses. Affirmed.

Defendant was charged in the information with having, by means of false representations and pretenses, made with intent to cheat and defraud, secured from Charlotte E. Levanaway the sum of \$6.83. It appeared that

the defendant, who was the supreme secretary of a co-operative and mutual benefit society known as the United Legion of America, offered Mrs. Levanaway, who was a practicing physician and surgeon, the position of medical examiner of women for the society, but claimed that, before she could be so empowered to act, she must become a member of the society and a holder of a certificate of insurance therein. The offer was accepted and she took a certificate with the society, paying the defendant the sum of \$6.83 therefor, and entered upon the duties of her office. The testimony showed that the defendant, to induce Mrs. Levanaway to act as such medical examiner, and to pay her money for such certificate, represented that the society did not pro-rate its death losses, but paid them in full, and that it had a reserve fund of \$15,000, secured for the indemnity of its certificate holders.

It was claimed by the defendant that the court was in error in permitting the prosecution to put in evidence a certain certificate pretended to be issued in behalf of the society and signed by the defendant as supreme secretary. It recited, among other things, that: "We have written nearly two million dollars in certificates of insurance. We also have a large, increasing reserve fund. We have never had to pay a death loss, which makes the U. L. of A. the largest and best society in the world. \* \* \*

We are the only society with a charter issued under the laws of the State of Michigan, that takes members over 65 years of age. \* \* \* No discrimination between sex and age. Insure all ages between 21 and 85," etc. Evidence was introduced showing, or tending to show, that the society had no moneys in its treasury, and did not have any fund on hand called a reserve fund, to meet losses. *Held*, that the certificate was properly admitted.

Exception was also taken to the remarks of the trial court, made during the progress of the trial, at the time this certificate was offered in evidence. Counsel for defendant objected to its introduction on the ground that the printed matter of the society, though placed in circulation by the defendant, could not be construed as a representation by the defendant of the several claims contained in the circular. The court remarked, "So far as the case goes now, it shows no society, but a gigantic fraud." *Held*, that the remark was not improper, and as the record showed no exception to it counsel could not be heard to complain in the Supreme Court for the first time.

Claim was made that the testimony of witnesses Bliss and Weaver did not substantiate the theory that the company which defendant claimed to represent did not have the reserve fund of \$15,000, as the defendant represented. *Held*, that their testimony showing that they did not know of any such fund sufficiently substantiated the theory that there was no such fund.

Reported in 58 N. W. Rep., 362.

The People vs. John Curtis. Error to Ionia. Larceny from the person. Affirmed.

The only error alleged in this case was that the court refused to give the following request on behalf of the respondent: "The jury are instructed that in their deliberating, if any one or more of their number, after deliberating with their fellow jurymen, retains a reasonable doubt as to defend-

ant's guilt, the jury should not find him guilty." Upon this point the court instructed the jury as follows: "Now gentlemen, I have said to you that this man is presumed to be innocent until he is proven guilty. There is about him that presumption, and it attaches to the entire case. The burden is upon the people to prove his guilt beyond a reasonable doubt. He is presumed to be innocent until proven guilty, and all of the jury must be satisfied beyond a reasonable doubt in order to convict. *Held*, that the instruction given was all that the law requires. This case was distinguished from *People v. Hare*, 57 Mich. 519.

Reported in 97 Mich., 489; 56 N. W. Rep., 925.

*The People vs. Martinus B. Kimm.* Error to Superior Court of Grand Rapids. Unlawful sales of liquor by druggist. Respondent paid fine and waived appeal.

*The People vs. Dirk Kimm.* Error to Superior Court of Grand Rapids. Unlawful sales of liquor by druggist. Respondent paid fine and waived appeal.

*The People vs. Thomas Hannifan.* Error to Recorder's Court of Detroit. Larceny. Affirmed.

Respondent was informed against for grand larceny, pleaded not guilty, and upon trial was convicted.

Questions as to preliminary proceedings were raised which were not raised before pleading to the information. *Held*, that they could not be considered on appeal.

On the trial the prosecuting attorney said to the jury that, "If you believe the testimony of these various men, corroborated by the facts as they are found concerning the bicycle, then I think you would be justified in convicting defendant, if you have no reasonable doubt about it." *Held*, that he did not express an opinion as to defendant's guilt.

The principal witness for the people testified on cross-examination that he had some trouble with defendant after the larceny of the bicycle, and that he would like to get even with him. *Held*, that it was not error to permit the witness, on re-direct examination, to explain the nature of such trouble.

Reported in 98 Mich., 32; 56 N. W. Rep., 1048.

*The People vs. John Borgetto.* Error to Dickinson. Murder. Affirmed.

The defendant was convicted of murder in the first degree.

Counsel for the defendant assigned error upon the instructions to the jury upon the subject of confessions and malice. Counsel, in his brief, said: "The court commented on the alleged confession when instructing the jury, saying, 'It is generally agreed that deliberate confessions of guilt are among the most effectual proofs in the law. It is claimed here by the prosecution that the respondent has confessed the crime charged, or the act which is claimed to have been committed. The court advises you that the confessions of a prisoner are received as evidence of guilt, upon the

presumption that a person will not make an untrue statement against his own interests. The evidence of a verbal confession of guilt is to be received with great caution; for, besides the danger of mistake, from the misapprehension of witnesses, the misuse of words, the failure of the party to express his own meaning, and the infirmity of memory, it should be recollected that the mind of the prisoner himself is often oppressed by the calamity of his situation, and that he is often influenced, by motives of hope or fear, to make an untrue confession. Subject to these cautions in receiving and weighing them, it is generally agreed that deliberate confessions of guilt are among the most effectual proofs in the law. Their value depends on the supposition that they are deliberate and voluntary, and are on the presumption that a rational being will not make admissions prejudicial to his interest and safety, unless when urged by the promptings of truth and conscience. The degree of credit to be given to the confessions in this case, or the alleged confessions, is for the jury, under the circumstances of the case, and the manner in which they were made. Look over the testimony, gentlemen, with reference to these confessions. Were they made deliberately, intelligently, and with understanding, on the part of the respondent? The weight of them is for the jury."

*Held*, that the charge correctly stated the law applicable to the case.

After defining the different degrees of homicide, the court treated the question of malice as follows: "Manslaughter is principally distinguishable from murder in this: that, though the act which occasions death be unlawful, yet the malice, either express or implied, which is the very essence of murder, is presumed to be wanting, and is wanting, in manslaughter. To constitute murder in either degree, the killing must be committed with malice aforethought. 'Malice' is here used in a technical sense, including, not only anger, hatred and revenge, but every other unlawful and unjustifiable motive. It is not confined to particular ill-will to the deceased, but is intended to denote an action flowing from a wicked and corrupt motive; a thing done, as the books say, '*malo animo*,' where the fact has been attended with such circumstances as carry in them the plain indication of a heart regardless of social duty, and fatally bent upon mischief. And therefore malice is implied from any deliberate or cruel act against another, however sudden. The time within which the wicked purpose is formed is immaterial. 'Malice aforethought' does not imply deliberation, or the lapse of considerable time between the formation and execution of the intent to take life, but rather denotes purpose and design. It means malice existing at any time before the act, so as to be its moving cause or concomitant. In considering this subject, you should carefully weigh the evidence bearing on the act charged, and all of the surrounding circumstances, the means or instruments used, if any were used, and all facts throwing light upon the nature of the act charged to have been committed. In this connection, I give the second, third, fourth, fifth and sixth of the respondent's requests: If a homicide is committed under the influence of passion, or in the heat of blood, produced by an adequate or reasonable provocation, and before a reasonable time has elapsed for the blood to cool, and reason to resume its habitual control, and is the result of the temporary excitement by which the control of reason was disturbed, the offense is manslaughter, and not murder. In determining whether the provocation is sufficient to reduce homicide to manslaughter, ordinary human nature, or the average of men recognized as men of fair average mind and disposition, should be taken as the stand-

ard, unless the person whose guilt is in question be shown to have some particular weakness of mind or infirmity of temper, not arising from wickedness of heart or cruelty of disposition."

It was claimed that the use of the term "*malo animo*" tended to confuse the jury, and error was assigned on the above portion of the charge.

*Held*, that the use of the term "*malo animo*" was so explained by the context that it was not likely to mislead an unlearned juror.

The remaining question arose in connection with the defense of irresponsibility. Testimony was introduced upon the part of the defendant tending to show his mental condition. The people offered testimony to rebut this. A question was raised over the competency of some of these rebutting witnesses, it being contended that they did not state sufficient circumstances to show that they had the requisite knowledge of defendant's condition. It was asserted that it is as necessary that the witness should detail the circumstances upon which he predicates the opinion of sanity as of insanity.

The following question was asked, and ruling and answer made: Germain Thebault, recalled in rebuttal for the people, testified as follows: "I have already testified that I knew John Borgetto for some time, and had talks with him once in awhile. Q. Well, now I ask you, taking into consideration the conversation you have had with him that you have testified to before, at the jail, at the time you made the arrest; at the time you arrested his wife, the talk you had with him there, and the other talks you have detailed—taking into consideration the character of these conversations, his actions at that time, and the way he talked—what is your judgment as to whether he was sane or insane? (To which question counsel for respondent objected on the ground that no proper foundation had been laid for the opinion of the witness, and that the question was incompetent, which objection was overruled by the court, and to which ruling counsel for respondent then and there duly excepted.) A. He seemed to be all right to me." It was insisted that this question was narrow, and should have included all of his observations during the entire period of his acquaintance, in which case he might have answered otherwise.

*Held*, that the question was proper.

Reported in 58 N. W. Rep., 328.

The People vs. Philip Flock. Exceptions from Midland. Embezzlement. Affirmed.

The original complaint and warrant charged the respondent, the treasurer of the township of Edenville, with the embezzlement of \$562.32 on or about the 2d day of January, 1891. The respondent waived the examination before the justice and entered into a recognizance for his appearance in the circuit court for trial. An information was filed, which, upon motion in behalf of the respondent, was quashed. By leave of the court, an amended information was filed, and a motion to quash it was overruled. Upon the refusal of the respondent to plead thereto, a plea of not guilty was entered. Upon the trial the respondent introduced no evidence, and was found guilty of embezzlement of \$425.32.

The first point was that the court erred in not quashing the information because it did not agree with the complaint and warrant, in that they alleged the offense to have been committed "on or about" January 2, while

the amended information alleged that it was committed "on" January 2. *Held*, that as the offense alleged in the complaint, warrant and information was identical the respondent could not have been prejudiced.

Error was alleged in the admission of the record kept by the township clerk, showing the amount charged as received by respondent from his predecessor, and other items of receipts and expenditures by him during his term of office. These records are required to be kept by the clerk. Howell's Statutes, section 739. The township board is required to settle with the treasurer, and the clerk is required to keep a record of such settlement. *Id.* sections 747-749. It appeared, also, that the books themselves and the items were before the town board and the respondent when settlements were made with him. Members of the board testified that he was satisfied with the account, except one item, which, it appeared, was allowed him. *Held*, that the testimony, taken together, was sufficient to establish the receipt of the money charged in the account as having been received from his predecessor, and the other items charged against him in the settlement, and that the record was properly received.

Reported in 59 N. W. Rep., 237.

*The People vs. Louis Robb, et al.* Error to Berrien. Debt. Affirmed.

This was an action on a recognizance of bail entered upon by defendants, conditioned for the appearance of Louis Robb at the March term of the Berrien circuit court for trial on charge of assault with intent to murder. Verdict for the plaintiff was rendered by direction of the court, and defendants appealed.

It appeared that the recognizance was entered into before a circuit court commissioner, and recited that an examination had been had before a justice of the peace, and that it was made to appear that an offense had been committed, and that there was probable cause to believe the principal guilty thereof. It was contended that the recognizance did not appear to have been filed by the clerk of the court. *Held*, in answer to this that the point was not called to the attention of the court below, and, furthermore, that the recognizance appeared to have been estreated and produced on the trial.

It was also contended that the circuit court commissioner had no power to let to bail in a less sum than that fixed by the magistrate. *Held*, that under Howell's Statutes, § 9476, providing that a circuit court commissioner, on application of a prisoner committed for a bailable offense, may inquire into the case, and admit him to bail, the commissioner may let to bail in a less sum than that fixed by the committing magistrate.

It was claimed that the sureties were discharged by reason of the arrest of the principal for another offense, for which he was held to answer at the same term of court at which he was bound to appear under the present recognizance, and by reason of what occurred on his appearance upon that charge. The testimony on this point was that the principal, Louis Robb, was arrested and held for trial on the charge of keeping a house of ill fame. He was arraigned, and pleaded guilty. The sheriff says: "When Mr. Robb pleaded guilty to one case against him here, I took charge of him. I went to Robb, and said to him, 'You will remain here, in the court room.' I was busy here in the court room, fixing the lights, or something of the kind, and he remained here in the court room until I got ready to go to my

supper. Then I left him with another officer. I don't know whether the judge said to me to take charge of him, or whether he said to Robb that he was to remain in the custody of the officer. I considered it my duty, at any rate." This occurred before supper. After supper the court sentenced Robb to pay a fine of \$25. He received the sentence, and went from the court room in charge of Mr. Lister, a deputy sheriff, to the office of the clerk, and paid his fine. It was not to exceed five minutes from the time the judge passed sentence upon him until the fine was paid. Robb was then released from custody. *Held*, that the detention did not release the sureties on the recognizance.

Testimony was offered by the defendant, and excluded by the court, which it was claimed would have shown a surrender. Levy Lister was acting as deputy sheriff at the time the bail was estreated, and at the time Robb was in court, and sentenced for the offense of keeping a house of ill fame. The defendants offered to show that one of the sureties on the bond requested Louis Hosbien, another deputy sheriff, to take Robb into custody whenever he interposed a plea of not guilty to the charge for which he was recognized in this case, and that this request was communicated to Mr. Lister. The court excluded this testimony,

*Held*, that a mere request by a surety on a recognizance, to a deputy sheriff, to take the principal into custody, is not a sufficient surrender to release him from liability on the recognizance.

It was claimed that the recognizance was extorted from the prisoner in violation of his rights. *Held*, that that fact should be set up in defense.

Reported in 98 Mich., 397; 57 N. W. Rep., 257.

The People vs. Sarah Spaulding. Error to Recorder's Court of Detroit.  
Pardoned.

The People vs. Ward Weeks. Error to Kalamazoo. Disorderly conduct.  
Affirmed.

Three objections were raised to the conviction in this case:

1. The case was adjourned by the justice from December 30 to January 6, and from January 6 to January 10, against the objection of the defendant. These adjournments were had by reason of the inability of the prosecuting attorney to attend at those dates, which fact was communicated by the prosecuting attorney to the justice by letter and by telephone. *Held*, that the adjournments were proper, and did not operate to the prejudice of the defendant, as he was out on bail. Citing *People vs. Shufelt*, 61 Mich. 237.

2. The defendant, who was charged with being a disorderly person, was tried by the justice without a jury. The justice returned to the writ of *certiorari* that trial by jury was waived by the defendant. The waiver appeared to be based upon the following facts: The court asked the defendant if he wanted a jury, to which he replied, through his attorney, that the court could do as it chose about the jury as he should put in no defense. The justice then asked the prosecuting attorney if the people desired a jury, to which he replied that they did not. *Held*, that this amounted to a waiver, and authorized a trial by the court. Citing *People vs. Steele*, 94 Mich., 437.

3. It was claimed that the sentence was excessive. The conviction was had under Act No. 264, Public Acts 1889. Section 2 provides different punishments for first, second, and subsequent offenses; the punishment for the first offense being a fine not exceeding \$50 and the cost of prosecution, or imprisonment not exceeding thirty days, or a recognizance for good behavior for three months. Section 3 provides that, if the defendant is required to give security for good behavior, the justice may require and order that the cost of prosecution, or any part thereof, shall be paid by the defendant, and in default of such payment he may be committed to the county jail until such costs are paid or he is otherwise legally discharged, but such imprisonment shall not exceed ninety days. The defendant was required, under this section, to enter into such recognizance and to pay one-half of the costs of prosecution, and in default of payment he was committed. It was contended that he could have been sentenced for only thirty days under section 2. *Held*, that where defendant was required to give such recognizance and pay half the costs, and failed to pay the latter, he could be committed for more than thirty days under section three.

Reported in 57 N. W. Rep., 1091.

The People vs. Manly Margeson. Error to Genesee. Assault with intent to do great bodily harm. Affirmed.

Respondent was informed against for felonious assault upon his wife with intent to do great bodily harm, less than murder. The defense was insanity. A number of witnesses testified upon that question. Dr. Palmer, who was in charge of the Oak Grove Sanitarium at Flint, was called by the defense. In his argument, the prosecuting attorney, commenting upon the testimony upon the subject, said: "Here is Dr. Palmer, who testifies this man is insane. What motive has he for doing it? For instance, I was in the employ of George W. Hubbard, in the machinery business, selling binders. I would try to induce every farmer I came in contact with to repair his machinery. That is the case with Dr. Palmer. Here is a hospital under the droppings of the eaves of this court house." This was the only error assigned. *Held*, that it would be a reflection upon the intelligence of jurors to assume that the respondent's case was prejudiced by the language used.

Reported in 57 N. W. Rep., 1099.

The People vs. James Pyckett. Exceptions from Lenawee. Arson. Affirmed.

The principal error relied upon for a reversal of this case was found in the alleged misconduct of the prosecuting attorney in asking certain incompetent questions and making certain statements. Scott Remington, a witness for the people, had testified to certain conversations with the respondent, both before and after the barn was burned. The witness was testifying to a conversation with the respondent after the fire, when he remarked that he looked rather pale. This and one other similar statement were promptly ruled out by the court. The prosecuting attorney then asked: "What was his appearance at that time, if anything out of the

way?" *Held*, that the evidence was not clearly incompetent nor the remark prejudicial.

On redirect examination, the prosecuting attorney commenced a question in the following language: "Now, after the admissions made to you by Mr. Pyckett, as you understood them." But, before the question was completed, an objection was interposed, and the question excluded. *Held*, that there was no substantial error in the above language or questions.

The attorney for the respondent had bitterly attacked this witness, and had subjected him to a long and rigid cross-examination. He was asked: "Have you not said to different ones that you had got to get rid of Mr. Pyckett in that neighborhood?" This witness at first denied, but to a subsequent question, the time, place and person to whom it was claimed he made the statement being stated, he replied: "I have no recollection of it." He was questioned at considerable length on this subject. The following questions were put by the prosecuting attorney on redirect examination: "If, at the time of the examination, you had come to the conclusion that Mr. Pyckett would be a good man to get rid of in that neighborhood, what produced that opinion in your mind?" and "Whether you had become satisfied of his guilt, that the man was guilty, and, for that reason, considered him a dangerous man in the community?" The court, in the progress of the trial, said: "Of course, the jury are to take nothing from a question unless there is something in the testimony of the witness which shows there is something in it." These questions were promptly ruled out by the court, which ruling was accepted by the prosecuting attorney without any statement of what he proposed to prove. *Held*, that the case could not be reversed because incompetent questions were asked and ruled out, on the ground that they might prejudice the jury.

Certain of the witnesses testified to the good character of the respondent. On cross-examination, they were questioned in regard to certain criminal acts of which respondent was reported to have been guilty. One Goodrich was such a witness for the respondent. On cross-examination, he was asked in regard to a conversation had with the witness Remington on the Sunday following the fire, and this question was asked: "Didn't you, on that occasion, say that you knew Mr. Pyckett was a very dangerous man, that you had had some trouble with him before this, something with regard to some oats or corn, and you did not dare to offend him in any way for fear of his revenge?" This conversation was denied. The witness Remington was recalled, and testified that Goodrich made such a statement to him. The testimony in regard to his reputation was general, and was not limited to the time of the fire, and previous thereto. The question put to the witness was this: "Do you know what his reputation for good moral conduct is?" The specific acts about which they were asked upon cross-examination all occurred prior to the fire. *Held*, that it was competent on cross-examination to ask them in regard to these acts.

Reported in 58 N. W. Rep., 621.

The People vs. Fred A. Rohrer. Error to St. Joseph. Violation of liquor law. Reversed and new trial granted.

The defendant appealed from a conviction of keeping his saloon open on Sunday. Joined with this charge, in another count, was a charge of keeping his windows curtained during the same day. Evidence was

admitted, tending to prove both charges; and the jury acquitted him of the latter and convicted him of the former charge. *Held*, that the counts charged separate and distinct offenses, and defendant was entitled to an election.

Reported in 58 N. W. Rep., 661.

The People vs. Frank A. Weithoff. Error to Recorder's Court of Detroit. Leasing room for gaming purposes. Reversed and prisoner discharged.

The information in this case charged that defendant "did knowingly suffer a gaming room and gaming table to be kept and maintained and played on the premises occupied and controlled by him, \* \* \* contrary to the form of the statute." The statute (Howell's Statutes section 2029) is as follows: "Any person who shall for hire, gain or reward, keep or maintain a gaming room, or a gaming table, or any game of skill or chance, or partly of skill and partly of chance, used for gaming, or who shall knowingly suffer a gaming room or gaming table, or any such game to be kept, maintained or played on any premises, occupied or controlled by him, shall be deemed guilty of a misdemeanor, \* \* \* and any person aiding, assisting or abetting in the keeping or maintaining of any such gaming room, gaming table or game, shall be deemed guilty of a misdemeanor." *Held*, that the information was defective, in that it did not charge that the gaming room and gaming table suffered to be kept were maintained for hire, gain and reward.

Reported in 58 N. W. Rep., 1115.

The People vs. Michael Bellett. Error to Recorder's Court of Detroit. Violation of barbers' Sunday closing law. Affirmed.

The respondent was convicted of a violation of the provisions of act No. 148 of the Public Acts of 1893, and the sole question presented for consideration was whether the act in question was constitutional. The act provides: "That it shall be unlawful for any person or persons to carry on or engage in the art or calling of hair cutting, shaving, hair dressing and shampooing, or in any work pertaining to the trade or business of a barber on the first day of the week, commonly called Sunday, except such person or persons shall be employed to exercise such art or calling in relation to a deceased person on said day. Sec. 2. That it shall be unlawful for any such person or persons to keep open their shops or places of business aforesaid on said first day of the week commonly called Sunday for any of the purposes mentioned in section one of this act: *Provided, however*, That nothing in this act shall apply to persons who conscientiously believe the seventh day of the week should be observed as the Sabbath and who actually refrain from secular business on that day."

It was urged that the act was invalid because it conflicted with article 6 of section 32 of the constitution of this State, which provides, among other things, that no person shall be deprived of life, liberty or property without due process of law, and for the further reason that it was in conflict with the fourteenth amendment of the constitution of the United States, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall

any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." It was conceded that the State, in the exercise of its police power, has the right to enact Sunday laws, and that it also has the right to provide for the regulation and restriction of those engaged in an employment which, in and of itself, may prove harmful to the community, such as the liquor traffic. But it was contended that the business of conducting a barber shop is not of this class, and that it is in the nature of class legislation to prohibit this business under more severe penalties than those provided for the conduct of other legitimate business on Sunday.

*Held*, that the act was not in conflict with the provisions of either the State or United States constitution above referred to, but was a valid police regulation.

A proposition not discussed by respondent's counsel, although it was raised by the record, was decided by the court, viz: That the law was not open to the objection that it was class legislation, for the reason that those who observe the seventh day of the week as the Sabbath were excepted from its provisions.

Reported in 57 N. W. Rep., 1094.

The People vs. Benjamin A. Hicks. Error to Kent. Indecent assault.  
Reversed and new trial granted.

Respondent was convicted on an information charging him with having made an assault on one Elsie Hoertz, a female child of the age of eight years, and taking indecent and improper liberties with her person. The prosecution was brought under section 9314b, 3 Howell's Statutes, which provides: "If any male person or persons over the age of fourteen years shall assault a female child under the age of fourteen years, and shall take indecent and improper liberties with the person of such child, without committing or intending to commit the crime of rape upon such child, he shall be deemed a felonious assaulter, and on conviction thereof shall be punished by imprisonment in the State prison not more than ten years, or by fine not exceeding one thousand dollars, or both such fine and imprisonment in the discretion of the court." The respondent was a man 62 years of age. On the day in question, he went to the rear of the house of the child's father, ostensibly to see him, but was told by the mother that her husband was not at home, but would return in about twenty minutes. Back of the house was a shed, in which was the child cracking some nuts. The respondent entered the shed, and what took place there was in dispute between the respondent and the child. It is necessary to state the claims of the parties, in view of the charge of the court: The child says that, when he entered the shed, he said, "What pretty legs you have!" She said: "Can you see my legs there?" He then put his hands under her clothes, as she expresses it, "under my pants," (illustrating where he put his hand by putting her hand to her side). She told him she would tell her mother, and at once went into the house. The mother of the girl was called as a witness. She stated that her daughter came in, and told her that the man picked up her dress, and reached way up under her clothing, to her private parts. The witness was permitted, under objection, to detail the whole conversation with her daughter. The respondent testified in his own behalf that he found the girl cracking nuts. She was sit-

ting on a block. He bent down on one knee in front of her, and took the hammer, and cracked some. That he got to fooling with her about them, taking some from her. That she commenced to crack one, and he was going to get it, or reached to get it, when she, sitting straddle of the block, put up her knee to hold him off, and that he took hold of her leg, and moved it away, to get the nut. That he put his hands upon her in no other way. She said she would tell her ma, and went into the house. He left immediately after that, and did not wait to see her father. *Held*, that statements made by the child to her mother immediately after the alleged offense, could not be testified to by the mother; that she could, at most, state, for the purpose of corroboration, that complaint was made to her.

It was contended by respondent's counsel that to constitute the offense, under this statute, the respondent must be shown to have taken liberties with the private parts of the child.

*Held*, that to constitute the offense, the liberties taken with the person of the child need not have been with her private parts.

The court stated what took place between the parties in the shed up to the time when the respondent said he attempted to take the nut from the child, and added, "So far the parties agree." The parties did not agree up to that point. On the contrary, the respondent positively denied that he put his hands upon the girl, or that he had any intent to commit any indecency. *Held*, that inasmuch as the theory of the defense was not stated to the jury in the general charge, and the jury were not told that if they believed the respondent's testimony, it was their duty to acquit, the charge was unfair in this respect, and the verdict and judgment should be set aside.

Reported in 98 Mich., 86; 56 N. W. Rep., 1102.

The People vs. Thomas Markey. Exceptions from Ingham. Violation of liquor law. Affirmed on default.

The People vs. Joseph B. Gordon. Error to Recorder's Court of Detroit. Murder. Reversed and new trial granted.

The defendant was convicted of murder in the first degree. The victim was his own child, and defendant testified that he accidentally shot the child in attempting to shoot one Robinson, of whom he was jealous, and who at the time was a boarder in the house, and whom defendant supposed to be intimate with his wife. He further stated that he obtained the weapon some hours before, for the purpose of shooting him the first time that he crossed his path. He did not state that he intended to kill Robinson. It further appeared from his testimony that the shooting was preceded by an altercation between the two men. The defendant's wife was called on behalf of the prosecution, and testified, against objection, to the circumstances of the shooting.

*Held*, that Howell's Statutes section 7543, removing the disabilities of the connubial partners of parties to testify, does not render the wife a competent witness against her husband on a prosecution for murder, without his consent.

The testimony of the defendant himself, which was said to conclusively show his guilt, rendered the error one without injury. He admitted that he procured a revolver for the purpose of shooting Robinson, and that he did shoot him, after becoming enraged in a controversy with him. The defendant said he bought the pistol to shoot him under certain circumstances, not to kill him. He did not shoot him on sight, but only after a quarrel. *Held*, that the testimony did not necessarily show him guilty of murder in the first degree.

Reported in 59 N. W. Rep., 322.

The People vs. Lawrence Luby. Error and *certiorari* to Kalamazoo. Violation of liquor law. Affirmed.

Respondent was arrested, upon a proper complaint and warrant, upon the charge of keeping his saloon open upon Sunday. He waived examination, and was bound over to the circuit court for trial. He pleaded guilty, and was sentenced to pay a fine of \$100 and the costs, which were taxed at \$5. He raised three objections to the sentence: (1) That he was not sufficiently examined by the circuit judge to determine whether his plea was voluntary; (2) that he was unduly influenced to plead guilty; (3) that Act No. 313, Public Acts 1887, was not constitutionally enacted. *Held*, that the first two objections could be disposed of by the return of the circuit judge to the writ of *certiorari* that he gave the respondent a private examination in a private room, and that the respondent then said that his plea was voluntary, and that he had not been threaten'd, coaxed, or induced by any one to plead guilty. The third point that the act in question was not read in full, but by its title only, upon the first and second reading in the Legislature, was overruled, citing Attorney General v. Rice, 64 Mich., 385.

Reported in 57 N. W. Rep., 1092.

The People vs. John Elder. Error to Genesee. Murder. Reversed and new trial granted.

Defendant appealed from a conviction of murder. He was a bartender, and, in an altercation with the deceased, struck him and knocked him down, whereupon one Nixon, a bystander, kicked him, from which kick death resulted. The theory of the prosecution was that there was preconcert of action on the part of Nixon and the defendant. The defendant denied this, claiming that he had no reason to expect any assistance from Nixon, or to anticipate his interference, and that he did not induce it. In his charge to the jury the trial judge said: "On the part of the defendant I give you the instructions which I now read." This was followed by the reading of several requests, in which the law was stated correctly upon this subject. The fifth was as follows: "If it shall appear to you, from the evidence, that Elder did not himself inflict the blow or do the injury which resulted in the death of Lowden, and that Nixon, by his own motion, while the encounter between Elder and Lowden was going on, rushed in, uninvited by Elder, and inflicted the injuries which produced Lowden's death, then you must acquit the prisoner." To this the court added as follows: "Unless, I have added, you find that his assault upon Lowden contributed and produced the conditions that deprived the deceased of the power of

resistance, and enabled Nixon the better to inflict great bodily injury on the deceased, if you find that the cause of death was the wounds or injury he received on that occasion." The requests upon the part of defendant were followed by those of the prosecution, twenty-two in number, most of which were given, and which seem to have concluded the charge. The first was as follows: "If you find that respondent assaulted Lowden, and felled him to the floor, putting the body of the deceased in such a position that he was helpless to protect himself from Nixon, and rendered it possible for Nixon to kick him, such act upon the respondent's part was unlawful; and if decedent's death was caused by the defendant's act, the kicking given by Nixon, or both combined, then they are equally guilty of the death caused." This request, and the addition to defendant's fifth, were in direct contradiction of the earlier requests given upon defendant's part, where the jury were instructed that the defendant could not be convicted if the death was caused by acts of Nixon, for which he was not responsible, and which he did not induce or anticipate. The discussion of this subject, which appeared to have been the important point in the case, was left with the requests, and the addition mentioned. *Held*, that the jurors were probably misled by the first request of the prosecution, which, in plain terms, told them they might convict the defendant if he had "assaulted Lowden, and felled him to the floor, putting his body in such a position that he was helpless to protect himself from Nixon, and rendered it possible for Nixon to kick him, if such kicks caused death," and that the implication contained in the addition to defendant's fifth request—that if defendant's assault "deprived the deceased of the power of resistance, and enabled Nixon the better to inflict great bodily injury on the deceased," was equally faulty. The case of *People vs. Carter*, 96 Mich., 583, distinguished.

The *People vs. John Duncan. Certiorari* to Sheriff and Clerk of Sanilac county. Reversed.

*Certiorari* to inquire into the right to detain the petitioner under a justice's commitment to await his trial for rape. The petitioner was arrested upon a warrant charging him with the crime of rape, and, on being brought before the justice of the peace who issued the warrant, made an affidavit that the justice was a material witness in his behalf. The justice transferred the complaint and warrant to another justice of the peace, before whom the respondent was taken, and he proceeded with the examination, and held the respondent for trial at the circuit, and in default of bail committed him to the county jail to await such trial. *Held*, that the justice could not transfer the case to another justice, and must proceed with the examination.

Reported in 57 N. W. Rep., 191.

In the matter of the petition of Stonewall J. DeFrance, for writ of *Habeas Corpus*. Denied.

Petitioner was arrested on a charge of forgery, and upon examination by the recorder's court of Kalamazoo, his bail was fixed at ten thousand dollars. He was unable to furnish bail and this was really an application

to have it reduced so that he might be able to procure bail and be released.

The amount of the draft alleged to have been forged was \$12,500.

It was claimed on the part of the petitioner that the bail was excessive and in violation of the provision of section 31, article 6 of the constitution, providing that "excessive bail shall not be required."

The prisoner was remanded to the custody of the sheriff of Kalamazoo county. No opinion was filed.

The People *ex rel* Attorney General vs. Allan C. Adsit, Circuit Judge.  
*Mandamus.* Granted.

This was a petition for a *mandamus* to compel the circuit judge to vacate his order quashing an information.

The information was not quashed on account of any legal defects, but the order was based entirely upon the return of the examining magistrate to the effect that while some portions of the testimony tended to establish the crime, yet when considered in connection with certain other portions, rendered the commission of the crime very improbable. In other words, the circuit judge assumed to pass upon the testimony taken at the examination, and to determine whether there was probable cause to believe that the crime had been committed. The prosecution insisted that the circuit judge had no right to pass upon the weight of the evidence, which was exclusively a question for the jury, and that when a party had had an examination and he had been bound over for trial by the examining magistrate, the circuit judge had no jurisdiction to pass upon the evidence returned, and thus determine whether the people were entitled to file an information. The court evidently adopted this view as the writ was granted. No written opinion was filed.

The People vs. George Brooks. Error to Macomb. Violation of Fish and Game Laws. Affirmed.

The respondent was convicted of a violation of the provisions of section 5 of Act No. 111 of the Laws of 1889. The facts were not in dispute. The respondent owned land adjoining that portion of Lake St. Clair in which fishing with nets was prohibited, and was engaged in the business of fishing opposite the premises with nets. It was contended on the part of the respondent that the act in question was unconstitutional—First, in that the title was ambiguous, inadequate, and uncertain, and was in violation of section 20 of article 4 of the constitution; and secondly, that the act violated section 32 of article 6 of the constitution, which provides that no one shall be deprived of life, liberty, or property without due process of law; thirdly, that it violated section 1 of article 4 of the constitution, in that it delegated to the State board of fish commissioners legislative power; and it was further contended that, even if the act was held constitutional, there was no such water, which the court could take legal cognizance of, as Lake St. Clair.

The title of the act was "An act to protect fish and to regulate fishing in the waters of this State, by providing close seasons for certain kinds of fish, by prohibiting the catching of fish in certain specified ways, by prohibiting the catching of fish of certain sizes and in certain waters and for

certain purposes, by prohibiting the obstruction of the free passage of fish, and by prohibiting the sale of certain kinds of fish, to protect persons engaged in fish culture, and to repeal inconsistent acts." It was contended that the title expressed the purpose to protect fish, the purpose to protect persons engaged in fish culture, and the purpose to regulate fishing. *Held*, that the act had only one general purpose, which was to regulate fishing.

It was argued that the lands of defendant abutting on the lake, and the nets and paraphernalia used in fishing, were made less valuable by depriving the owner of the right to fish, and that this resulted in depriving the respondent of property.

*Held*, that the act did not deprive one of property without due process of law, by diminishing the value of a riparian owner's lands and fishing tackle.

It was contended that the statute was invalid, as conferring upon the State board of fish commissioners legislative power, in that it authorized such commissioners to give permits to any person to catch or take fish from the waters at such time and in such manner as the commission may direct, for the purpose of propagation. *Held*, that this did not confer upon the commission legislative power.

It was contended that there was no such water, which the court could take cognizance of, as Lake St. Clair. *Held*, that the court would take judicial notice of the existence of the geographical subdivisions and of the existence of such a body of water as this lake.

Reported in 59 N. W. Rep., 444.

The People vs. William Ingraham *et al.* Error to Hillsdale. Violation of Local Option Law. Affirmed.

Respondent was convicted under an information charging him with having kept a saloon and place where intoxicating liquors were sold, in violation of Act No. 207, Public Acts 1889, commonly called the "Local Option Law." The errors assigned related principally to the refusal of the court to give certain requests to charge, and to the charge as given. The defense was that respondent kept a lunch room, and sold only soft drinks. The people introduced testimony to show that on October 12, 1892, several parties went into the defendant's place, and there called for, obtained, and drank lager beer, and that was repeated several times that day. These parties who drank the beer testified that it was intoxicating, and just such lager as they were accustomed to find in other saloons. As they described the place kept by defendant, the front room was for cigars; back of this a bar room, with bottles and cases of bottles, a billiard and pool table, and a bar. The people also showed that respondent had taken out a government license for the sale of malt liquors at that place. The respondent testified that all the drinks he had for sale were Toledo ginger ale and Stone's pop; that where he bought the ginger ale, in Toledo, he told them he wanted a non-alcoholic and non-intoxicating drink, as the local option law was in force in the county where he lived and did business, and he was assured by the parties that he would have the right to sell the ginger ale, as it was non-alcoholic and non-intoxicating. He further testified that he sold no lager beer. In explanation of how he came to have a government license to sell malt liquors, he claimed that a party who had formerly been a revenue collector sent for him to come to

Hillsdale, and there advised him to get such a license, and he got it because it was cheaper than being called to respond in the United States court.

Upon these issues the court was asked by respondent to instruct the jury: (1) "If you find that defendant purchased the drink called 'ginger ale' in good faith, believing it was non-alcoholic and non-intoxicating, and sold it in good faith as such, then you must acquit." This was refused, and the court instructed the jury as follows: "It is claimed here, on the part of this defendant, that these liquors were sold here, if they were prohibited by the instructions which I will give you, that it was not intentionally done. This law is passed for the purpose of preventing traffic in such prohibited liquors, and it is the business of the person who engages in selling liquors for a beverage to see that he is not selling prohibited liquors. I do not by this instruction, however, gentlemen, desire you to understand that the sale of such liquors, under all circumstances, would be a violation of this statute; but he should use such reasonable means to determine whether the liquors which he is selling are such as are prohibited by law as a careful, prudent man, desiring to observe and obey the law, would use to ascertain such fact. If this defendant was keeping such a place for the sale of such liquors as I have said would be a violation of this law, the fact that he did not know, at the time when the sale was made, that these liquors were intoxicating, would not excuse him, unless he took such reasonable means to ascertain whether the liquors were such as were prohibited, as an ordinarily careful and prudent man, desirous of obeying the law and keeping within its provisions, would take to ascertain such fact. I think that, if he did not know he was keeping a place where such liquors that were prohibited were sold, he did not know that they were such liquors as the statute prohibits from being sold, and he used such reasonable means to find out whether they were or not, and did not discover it, that he should not be held responsible. The mere fact that this defendant, Mr. William Ingraham, took out this license, does not, in itself, establish the fact that he was keeping such a place as is prohibited by the statute. It is one of the circumstances, simply, as the court has permitted to go before you to enable you to determine whether he was keeping such a place or not. It should have that weight which you think, in view of all the circumstances, it ought to have. The defendant gives his explanation of why he had it; and you are instructed to construe this portion of the evidence in the light of all the circumstances which surround it. It bears upon the question of whether he was keeping such a place as was prohibited by the statute." *Held*, that the request to charge was properly refused, and that the charge, as given, was proper under the facts shown.

The court was also requested to charge the jury, substantially, that if they believed the drinks sold contained only 1 per cent of alcohol, and were not convinced, beyond a reasonable doubt, that they were intoxicating, they should acquit. The court charged that the statute prohibited the keeping of a place where malt, brewed, fermented, vinous, or intoxicating liquors, or some part of which were spirituous and intoxicating, and, if the respondent was not keeping such a place, he could not be convicted; and it was for the jury to say, under all the evidence, whether he kept such a place. *Held*, that under the circumstances this was as fair a charge as the respondent was entitled to.

The court was further asked to charge the jury that if they found that the drinks sold contained some alcohol, yet not of sufficient quantity to cause intoxication, they must acquit. *Held*, that the request was properly refused.

Reported in 59 N. W. Rep., 234.

The People vs. Jacob Burridge. Error to Berrien. Arson. Affirmed.

Respondent was informed against under section 9124, Howell's Statutes, for burning the dwelling house of one William Duvall in the daytime. Duvall lived by himself in a house situated on land owned by defendant. Just what the arrangement was by which Duvall claimed to have the right to occupy it, does not appear, but it does appear that the defendant was unable to sell the land so long as Duvall remained there. Some two years before the fire, as was testified on the trial by one of the people's witnesses, respondent stated that he wanted to get Duvall off, so he could sell, and that if he did not get off he would burn him off. The fire occurred in the daytime, about noon. Defendant was seen going towards the house with a can partly filled with kerosene oil, and coming back from there with the can empty. A few minutes after, flames were seen. No one was in the house at the time. The contention was:

1. That there was no evidence to go to the jury which would authorize a conviction.

*Held*, that there was some evidence from which the jury might properly find the respondent guilty of the crime charged.

2. That the sentence imposed was not authorized by law.

The respondent was sentenced to State prison at Jackson for the period of nine months, under section 9124, which provides that the offense "shall be punished by imprisonment in the State prison for life or for any term of years." Counsel claimed that imprisonment for nine months was not for "any term of years," and that, therefore, the sentence was void, and the respondent must be discharged.

*Held*, that though the sentence of nine months was irregular, yet such irregularity, being in defendant's favor, could not be taken advantage of by him.

Reported in 58 N. W. Rep., 319.

The People vs. Stub Wood, impleaded with Edward Coleman. Error to Kalamazoo. Burglary. Affirmed.

The respondent was convicted of breaking and entering the flouring mill of the Merrill Milling Company, about 1½ miles south of the city of Kalamazoo. The theory of the prosecution was that the offense was committed by the respondent, one Edward Coleman, and one Betts. The evidence was circumstantial, and tended to show that there were tracks of two or three men leading from the window of the mill to the road, where there were tracks made by a vehicle which apparently had one wheel which did not track with the others; that the imprint of the foot of the horse was rather small; that one foot made an impress indicating that it had a broken portion of a shoe on, and that the other feet of the horse were unshod;

that, shortly after the burglary, flour of the same grade as that stolen, and in sacks of the Merrill Milling Company, was found in possession of respondent; that it was a grade of flour not sold to local dealers; that the co-respondent, Coleman, had a horse and light wagon; that the horse was unshod, except a portion, only, of a shoe on one foot; that one wheel of the wagon did not track with the others; and that, between 6 and 7 o'clock of the evening of the night on which the burglary was committed, the three respondents were seen driving south towards the place of the burglary with a one-horse wagon. It was insisted that there was no sufficient evidence to warrant the conviction of the respondent. *Held*, that there was ample testimony from which the jury might have found that the burglary was committed by Coleman and his associates, and there was also evidence to go to the jury upon the question of whether the respondent Wood was associated with him in the burglary.

Error was assigned on the admission of the testimony of the miller that the sample of flour found in the possession of one of the respondents was the same as that manufactured at the mill. *Held*, that the testimony was competent.

Error was assigned upon the refusal of the court to permit a witness to testify whether a certain grade of flour manufactured in another mill of the Merrill Milling Company was also manufactured by other dealers. The witness had already testified that he did not know what grade of flour was manufactured in the mills of the Merrill Milling Company, other than the one at which he worked. *Held*, that the comparison, if any was to be made, should have been with the grade manufactured in the mill alleged to have been burglarized.

Error was assigned upon refusal of the court to give respondent's request as follows: "The jury are instructed that the possession of stolen property found with persons accused is not *prima facie* evidence, even, of a burglary;" respondent's counsel citing *Stuart vs. People*, 42 Mich., 255, as sustaining this request. The circuit judge, however, in his general charge did instruct the jury in the language of the request, but added the following: "As applied to this case, however, if you find that whoever broke the window stole the flour out of the mill, then, in whosoever possession the flour was found shortly after, it would be evidence of larceny, and you would from that be justified, provided you found as a fact that the same persons who broke and entered the mill committed the larceny, you would be justified in finding the parties in whose possession the goods were found, guilty of burglary, as well as larceny." *Held*, that the instruction correctly stated the law of the case.

Respondent presented a request as follows: "Before a conviction can be had in any criminal case, the jury must, individually, be convinced by the evidence of the guilt of the respondents, beyond a reasonable doubt; and it is their duty to hold their own judgment, uninfluenced or unprejudiced by others. It is not a case admitting of a compromise to come to a verdict." The circuit judge charged the jury as follows: "Before a conviction can be had in any criminal case the jury must, individually, be convinced by the evidence of the guilt of the respondents beyond a reasonable doubt." *Held*, that it was proper to refuse to charge that each juror must hold his judgment, uninfluenced by others, since jurors are permitted to deliberate.

Complaint was made of the fact that Mr. Kinnane was permitted to assist the prosecutor at the trial. The record failed to disclose that any objec-

tion was taken until after the verdict; and when the objection was raised, on a motion for a new trial, Mr. Kinnane showed by affidavit that he had no private interest in the prosecution of the case. *Held*, that he was not disqualified to assist the prosecution.

Reported in 58 N. W. Rep., 638.

The People vs. William Newman. Exceptions from Menominee. Violation of liquor law. Affirmed.

Respondent was complained against for selling beer at Hermansville, in the county of Menominee, without having filed the bond and paid the tax required by law. Respondent's contention was that he was acting as agent for a brewing company of the city of Menominee, and he relied upon a contract, which contained the following provisions: "Said party of the first part have, and by these presents do hereby constitute and appoint said party of the second part their agent at and in the township of Hermansville to sell for said party of the first part beer, under the following terms and conditions: (1) Said agent shall promptly collect and return all empty kegs and barrels to first party. (2) He shall promptly collect all moneys due to said first party for all beer sold, and remit the same to said party of the first part on Monday of each and every week. (3) He shall pay the freight on all beer shipped to Hermansville, and keep an accurate account thereof. (4) The party of the first part, for such services, agrees to pay the party of the second part, as commission, on every barrel sold by him, the difference between five dollars with the freight deducted and whatever price said beer may sell for above the amount, which said commission said first party permits said second party to retain; and which said commission shall be compensation in full for all services performed by him for the first party. (5) The balance, five dollars for each and every barrel of beer sold, shall be promptly, and in the manner above stated, remitted by said second party to said first party. (6) The said party of the second part hereby accepts the said agency, and agrees to be bound by and observe the terms and conditions above mentioned. (7) It is understood that the title in and to the beer furnished William Newman does not vest in him, but it and the right of possession to same shall at all times remain in said party of the first part, until sold by second party; and all moneys received by him, it is hereby understood, belong to said first party. (8) This agency may terminate at any time at the will of either of the parties hereto, on three days' notice; and, in the absence of a previous termination thereof, this agency shall terminate on the 1st day of May, A. D. 1894. (9) Upon the termination of this agency, all books of account between first party (or its said agent) and its customers shall be surrendered to said first party, and all moneys of the company in said agent's hands shall be promptly paid over to first party." The court instructed the jury that, under the terms of this contract, there was practically a sale of the beer to respondent, and that he was not an agent, but a purchaser. *Held*, that defendant was not exempt from payment of the beer tax.

Reported in 57 N. W. Rep., 1073.

The People vs. Jerome D. Hamilton. Exceptions from Van Buren. Violation of local option law. Reversed and prisoner discharged.

The information charged that on the 1st day of March, 1893, and on divers days and times between that day and the 7th day of May, 1893, respondent did sell and furnish to one Bryant a certain quantity of spirituous liquors, aggregating in amount, between said dates, three gallons and three quarts of whisky, the said Bryant being then and there a person in the habit of getting intoxicated, and respondent being then and there a druggist and registered pharmacist.

It was contended that the information did not allege that the liquor was sold to be used as a beverage. The statute prohibits a sale to a minor, except for medicinal or mechanical purposes, on the written order of the parent or guardian of such minor, or to any adult person whatever who is at the time intoxicated, or to any person in the habit of getting intoxicated, or to any person when forbidden, etc., or to any other person to be used as a beverage. *Held*, that under this statute, a sale to a person who is at the time intoxicated, or to a person who is in the habit of getting intoxicated, is absolutely prohibited, whether to be used as a beverage or not.

It was objected that the information was bad for duplicity. *Held*, that each sale to a person in the habit of becoming intoxicated is, under our statute, a separate offense, and, as the offense is not of a continuing character, the continuando could not be rejected as surplusage.

Reported in 59 N. W. Rep., 401.

The People vs. John Kelley. Error to Recorder's Court of Detroit. Disorderly. Affirmed.

This was a prosecution under the disorderly act.

It was first contended that Act No. 264, Public Acts of 1889, was in conflict with section 20 of article 4 of the constitution, in that it embraced more than one object. The act is entitled "An act relative to disorderly persons, and to repeal chapter 53 of the Compiled Laws of 1871, as amended by the several acts amendatory thereof."

Section 2 provides that "any person complained of as being a disorderly person and who shall be convicted or shall plead guilty shall be punished by a fine not exceeding fifty dollars and costs of prosecution, or by imprisonment in the county jail or the Detroit House of Correction not exceeding thirty days. \* \* \* Any person who shall be convicted a second time of being a disorderly person, the offense being charged as a second offense, shall be punished by a fine not exceeding one hundred dollars and costs of prosecution, or by imprisonment in the county jail or the Detroit House of Correction not less than thirty days nor more than three months; and for a third and all subsequent convictions, the offense being charged as a third or subsequent conviction, the punishment shall be a fine not exceeding one hundred dollars and costs of prosecution, or imprisonment in the county jail or the Detroit House of Correction or the State House of Correction and Reformatory at Ionia not less than six months nor more than two years."

Section one enumerates those who come under the term "disorderly persons." Among these are drunkards and tipplers. The precise contention

was that the title gave no information as to what acts constituted a disorderly person, and that the third offense of which the defendant was found guilty was not expressed therein.

*Held*, that the act was not unconstitutional because the title gave no information as to what constituted a disorderly person, or because the act increased the punishment on the occasion of a second or third offense.

The information charged the respondent with being a disorderly person on September 26th, and then set forth the dates of several other convictions for the same offense in the police court and in the recorder's court of the city of Detroit. It was objected that the information was fatally defective, in that it did not allege that the courts wherein the former convictions were had, had jurisdiction. The respondent pleaded not guilty to the information, without having made any objection to its form, nor was the objection raised in the court below. *Held*, that the objection came too late.

It was objected that the court erred in permitting parol evidence of previous convictions. The record of several previous convictions was in evidence. The respondent was a witness in his own behalf, and testified that he had been confined in the house of correction six or seven times for being drunk. *Held*, that the error was harmless.

It appeared from the warrants which were issued by the police court wherein the respondent was examined, and the cases certified to the recorder's court for trial, that the respondent was charged with several previous convictions. *Held*, that the recorder's court had jurisdiction to try the cases.

It was also claimed that the identity of the respondent with the person named in the former convictions was not shown. *Held*, that his own admissions were sufficient identification.

The court, after stating to the jury the charge against the respondent, evidently reading from the information, instructed them as follows: "You have heard the testimony of the prosecution, and you have heard the testimony of the defendant. I do not care to make any comments on the testimony. You have the testimony before you. All you have to do is to follow the testimony. The defendant is entitled to the benefit of every reasonable doubt. Every defendant is presumed to be innocent until proved to be guilty." It was insisted that this charge was not sufficiently specific. *Held*, that the jury could not have been misled, or the respondent prejudiced, as the evidence was so clear and convincing that no other verdict than that of guilty could have been found.

The respondent was sentenced to the Detroit House of Correction for two years. His counsel insisted that the sentence was excessive and unauthorized. *Held*, that as the sentence was authorized by law, and was one within the exclusive province of the Legislature to prescribe, the court would not review the discretion of the trial court in such matters.

Reported in 57 N. W. Rep., 1090.

In the Matter of the Petition of Charles Canfield for Writ of *Habeas Corpus*. Writ granted.

Upon the 7th day of October, 1890, the petitioner was sentenced to be confined in the State prison for a term of four years. At its session of 1893 the Legislature made a change in the law pertaining to the time to

be allowed in the reduction of the term of imprisonment of convicts for good behavior. Act. No. 118, Laws of 1893. The difference in time allowed will be readily understood by the comparison of the acts, in parallel columns:

| Act of 1877.   | Act of 1893.  |
|--|---|
| First and second years, 2 months each,<br>122 days.    | First and second year, 5 days per month,<br>120 days. |
| Third and fourth years, 75 days per year,<br>150 days. | Third and fourth year, 6 days per month,<br>144 days. |
| Total, 272 days.                                       | Total, 264 days.                                      |

It will be seen from the above that a prisoner whose conduct was such as to entitle him to the full benefit of the statute would be entitled to a reduction of eight days more, under the law of 1877, than under that of 1893. The act of 1893 took effect in May last. If petitioner's good time was to be computed under the former act throughout his term, he was entitled to discharge on January 8, 1894. If it should be computed under the old act up to the date of its amendment (which was conceded), and subsequently under the new, he should have been discharged on January 16, 1894. Another feature of the new law, not found in the former, was that convicts serving second terms should receive less benefit, viz., two days per month for the first two years and three days per month for the third and fourth years. One serving a third term was allowed no reduction whatever. The petition alleged that the warden claimed that he (the petitioner) was serving a second term, and proposed to compute the time accordingly, which (giving the petitioner the benefit of good time earned before the act of 1893 took effect) would end his term on March 4, 1894. Petitioner did not deny that he was serving a second term in said prison, and the return stated that such was the fact. Howell's Statutes, section 9704 (in force when the petitioner was sentenced), provides: "The warden shall keep a record of each and all infractions of rules of discipline by convicts, with the names of the persons offending, and the date and character of each offense, which record shall be placed before the managers at each regular meeting of the board, and every inmate who shall have no infraction of the rules of the prison or laws of the State recorded against him shall be entitled to a deduction for each year of his sentence, and *pro rata* for each part of a year when the sentence is for more or less than one year, as follows." The question here presented was whether this language had the effect of vesting the convict with the right to have the time deducted from his sentence if the record should show him to have been guilty of no infraction of the rules of the prison. It was contended that this law should not be construed as an engagement by the State to compensate a convict for obedience to rules which it was his duty to obey, but that it was rather a provision in the furtherance of prison discipline, which, while made by the Legislature because beyond the power of the board of inspectors to make, was still a rule of discipline analogous to those which the board might make, and change from time to time, and might therefore be made to take effect upon past offenses. *Held*, that the statute in force when petitioner was sentenced entitling a convict to a certain deduction for each year of his sentence for good conduct, conferred a vested right on persons sentenced while it was in force, and their terms were not affected by the lessening of said deduction, and its larger abridgment, in second sentences, under the act of 1893.

It was also contended, upon behalf of the petitioner, that under the act of 1893 it was not within the powers of the prison authorities to determine whether he was serving a second or other term in the prison, and that, before he could be deprived of good time earned, that question must have been adjudicated upon a hearing, where he could have an opportunity to be heard, as upon the trial from which his conviction resulted. *Held*, that the abridgment of the good behavior deduction, under the act of 1893, as to convicts serving second terms, did not require an adjudication after hearing of the fact of former sentence, but left that question to the prison authorities, subject to review on *habeas corpus*.

Reported in 98 Mich., 644; 57 N. W. Rep., 807.

The People vs. Frank L. Stanley. Error to Van Buren. Violation of local option law. Affirmed.

The respondent was convicted of an unlawful sale of liquor in the township of Paw Paw, Van Buren county, on the highway, in the nighttime. The prosecution proved by numerous witnesses the fact that sales of liquor were made on the occasion charged in the information. The question in doubt was the identity of the respondent with the person who made the sales. It appeared by the testimony of the witnesses that the person who made the sales drove to the vicinity of where a dance was being held, and the sales were made from his buggy. The witnesses called by the prosecution were very evidently unwilling witnesses. There was some moon. Those who made the purchases of liquor were within three or four feet of the person in the buggy, and yet were very reluctant to express any opinion as to the identity of the party. The first witness upon this branch of the case was Mr. Stowman, who testified: "I just called for fog, and got beer. That was all there was said. The party in the buggy made no reply, that I know of. I paid him twenty-five cents for it, a twenty-five cent piece. It was the only one I had. I took no notice of the horse. I was within three feet of the man. Q. Mr. Stowman, do you want this court and this jury to understand that you were within three feet of this man on this night, and didn't know who it was? A. Well, I couldn't prove who it was. Q. I am not asking you to prove who it was. A. Then I can't tell you who it was. I couldn't swear who it was, to be positive of it. I couldn't swear, to be positive, who it was. Q. Who did you think it was, that night? A. I thought it was Frank Stanley, for I heard the name spoken. That is all the reason I knew it was him." A motion was made to strike out this answer, but it was denied, and a further question put: "Who did you think it was, when you bought this beer the first time, at the time you bought it? A. I didn't know who it was. Just in the light, as much as I could see, I thought it was Frank. Q. Frank Stanley? A. Yes, sir; that is all I know, that is, from what I thought. Q. You judged from what you saw of this man in the buggy? A. Yes; from what I could see. It was very dark, quite dark, in the shadows of the trees. There was a little moonlight. It was under the shadow of a tree, and it was quite dark there. Q. And you say at that time you thought it was Frank Stanley. A. I think so." On cross-examination he said, in answer to the question, "If it hadn't been for anything you heard said by other parties there that night, would you have thought it was Frank Stanley?" "I don't know as I would. I might, and might not. Q. You heard parties say it was Frank

Stanley, did you? A. Yes; both before and after I got the beer." *Held*, that the testimony was admissible as a part of the *res gestae*.

Other witnesses were called, and testified that it was their impression, from what they saw of the party in the buggy, that it was Frank Stanley. This testimony was objected to, and error was assigned upon its admission. *Held*, that the testimony was competent; that it is not necessary that witnesses shall swear to a fact with certainty, and, if from their opportunity of judging of the identity, their opinion is of value, it is receivable.

One witness was called who testified to his impression, based upon what he heard the parties say. He testified that all he knew about the identity of the party was what he heard the boys say around there. He was then asked the question: "Did you have any impression since, who it was, when you saw him there in the buggy? A. I didn't, not at the time, then; no, sir. Q. Did you have any impression since, who it was?" This was objected to, and his answer was: "Why, it was my impression that it was Frank Stanley, from what I heard the boys say. That is all I know about it. I couldn't swear it was him." On cross-examination he further testified that the only impression he had was the one gained from what he heard the boys say. A motion was then made to strike out the whole of the testimony of the witness, but this motion was denied. *Held*, that if the motion had been directed to the striking out of the testimony as to the impressions which the witness had, after it had appeared definitely that they were based wholly upon what he had heard said, it should have been granted; but that a motion to strike out the whole of certain testimony, part of which was admissible, was properly overruled.

Reported in 59 N. W. Rep. 498.

The People vs. Angelo Jassino. Error to Houghton. Assault with intent, etc. Reversed and new trial granted.

The respondent was convicted of an assault with intent to do great bodily harm less than the crime of murder. Error was assigned on a portion of the charge relating to the proof of good character, which was as follows: "Now, the good character of this respondent has been put in question. A man's good character is a valuable thing under all circumstances, and it is proper evidence to be considered by a jury in a doubtful case to determine whether or not a man having that good character would commit such an offense. It often avails, and should avail to acquit a man under such circumstances; but when there is positive proof of the commission of an offense, then good character cannot avail to overthrow that proof." The respondent's counsel had requested an instruction as follows: "The jury have the right to give defendant's reputation, proved, such weight as they think it is entitled to." *Held*, that the charge as given by the court on its own motion was erroneous, as the defendant was denied the benefit of proof of good character if the jury should find positive evidence tending to show the commission of the offense; that evidence of good character is admissible not only in a case where doubt otherwise exists, but may be offered for the purpose of creating a doubt.

Exception was also taken to the following extract from the charge of the court: "It is not necessary, when a blow is given, and where anything like a deadly weapon—such a weapon as would inflict great bodily

harm. It is not incumbent upon the people—I mean it is not necessary for them—to show the specific intent with which the act was done.”

*Held*, that an examination of the charge, taken as a whole, showed that it was the purpose of the judge to instruct the jury that the question of intent was a question of fact, and that an inference of intent might be drawn by the jury from the use of a deadly weapon and therefore, the instruction was not erroneous.

Reported in 59 N. W. Rep., 230.

The People vs. Henry James. Exceptions from Marquette. Violation of liquor law. Affirmed.

Respondent was convicted of keeping open his saloon after the hour of 11 o'clock in the evening. The people's testimony showed that the respondent kept a saloon where spirituous and malt liquors were sold. A policeman and the marshal and deputy marshal testified that on the evening charged, between 11 and 12 o'clock, they passed the place and heard voices in the saloon, from which they judged that four or five persons were in there, and they heard the glasses rattling. The defendant's case was stated in the record as follows: "The testimony of the defendant, taken at his request on the examination, was introduced in evidence, and was as follows: 'Myself, barkeeper, and Dennis Caples were in my saloon, scrubbing, from eleven until twelve o'clock, on the night in question. We left at twelve o'clock. Dennis Caples was not in my employment. We had only one drink at that time. We had a night cap when we left.' The defendant being sworn, testified: 'The 22d of April was Saturday. I closed my saloon at eleven o'clock. My bartender and Dennis Caples, I think his name is, stayed in my place with me after that time. Q. What did you stay there for? A. Cleaning up the place, scrubbing the floor and cleaning the glasses, and fixing the things up all right for Monday morning. When we got through we went out the back door, and locked it up. No one was admitted to the saloon from the time I closed it, at eleven o'clock to the time I left. No liquor was sold there. I stopped there for the purpose of cleaning the place up, and not for the purpose of selling liquors.' On cross-examination the defendant testified: 'We took one drink when we went away, as I told you before. Dennis Caples is a dealer in pop; you bet he is. He helped us scrub out.' " The court below instructed the jury as follows: "In disposing of this case, in the opinion of the court, the testimony of the respondent shows that there was a violation of the law here, what may be termed somewhat technical, but it is a clear violation of the law, in my judgment. The law requires these places, saloons, to be closed after eleven o'clock; and it seems to me that where the public, or any part of the public, are permitted so stay in the saloon, if the doors are closed, and drinking takes place, especially, that it cannot be said that the saloon is closed within the meaning of the statute. It appearing by the undisputed testimony of the respondent that Mr. Caples was there in the saloon, and took a drink with him and his bartender, and that he and Caples and the bartender were there for some time after eleven o'clock, then there was a clear violation of the statute. That is my judgment about it, gentlemen. You will go to your room, and see whether you find a verdict of guilty or not guilty." *Held*, that the charge was proper under the evidence.

Reported in 59 N. W. Rep., 236.

In the matter of the petition of Blanche Mebus for writ of *habeas corpus*. Prisoner remanded to the custody of the superintendent of the Industrial School for Girls.

On the 24th day of July, 1893, Oliver G. Mebus, the father of Blanche Mebus, made a complaint before H. A. Tillotson, a justice of the peace of the city of Marshall, charging the said Blanche with being a truant and disorderly person under the age of fourteen years, and charging that she willfully absented herself from the place where she was at work, without the consent of her parents, and that she had been drunk and intoxicated from the 19th of July until the said 24th day of July, and that her father, the complainant, had been unable to get control of her since that date.

The county agent was duly notified by the justice of the peace, and inquired into all the facts and circumstances connected with the charge against the said Blanche, also all the facts relating to her parentage, history and surroundings, and reported that she was born in Eckford on the fourth day of January, 18—; that her home surroundings were poor, her associations bad, and her education fair; that she had not been arrested before; that her reputation was poor; that she was a pleasant girl, agreeable about the house and was liked by those for whom she worked; but that she would run about nights, keeping low and disreputable company; that she would promise to do better, but would disregard her promises. The agent recommended that she be sent to the State Industrial Home for Girls at Adrian.

Upon filing and reading the report, the complaint was read to Blanche and the contents fully made known to her, and she having plead guilty thereto, two witnesses were examined, namely, the said Oliver G. Mebus and one John L. Bean, and thereupon the said justice determined that she was guilty in manner and form as charged against her, and was of the age of thirteen years and six months, and in accordance with the recommendation determined that it was for the public interest and the interest of the child, that she be sent to the State Industrial Home for Girls at Adrian, there to remain until she should arrive at the age of twenty-one years, unless discharged according to law.

The complaint and warrant appeared to be somewhat irregular, as the specifications showing that she was a truant and disorderly person were not within the strict letter of Act No. 222 of the Public Acts of 1887, the language of her absenting herself in the complaint being, "willfully absents herself from the place where she is at work, without the consent of her parents." The language of the statute is "willfully absents herself from \* \* \* the place where such person is legitimately employed to labor." It also showed that she was intoxicated for a period of six days, but the complaint did not show that she was a frequenter of saloons or other places where intoxicating liquors were sold.

It was next urged that said act 222 was unconstitutional and void.

- (a) Because said act embraced more than one object.
  - (b) Because it inflicted a cruel and unusual punishment.
  - (c) Because it punished one class of persons for the same offense more than another.
  - (d) Because it punished as a crime that which was not a crime.
  - (e) Because it created a misdemeanor and punished it as a crime.
- These objections were overruled and the petitioner remanded.

No opinion was filed in this case.

The People vs. William Weston. Error to Recorder's Court of Detroit.  
Violation of liquor law. Writ of error dismissed on stipulation.

In the matter of the petition of James Pitton for writ of *habeas corpus*.  
Prisoner discharged.

On the 17th day of March, the petitioner in this case was convicted in the superior court of Grand Rapids of a violation of the liquor law. On the 31st day of March, 1893, he was convicted of a like offense. He appealed both cases to the Supreme Court. For convenience of reference they will be referred to as case No. 1 and case No. 2. In case No. 2, on the first day of April following his conviction, petitioner was sentenced to pay a fine of one hundred dollars and costs, and to confinement in the common jail of Kent county until said fine was paid, but not exceeding three months, whereupon he appealed to the Supreme Court, and sentence was stayed. This appeal was subsequently dismissed on default.

On the 12th day of January, 1894, the petitioner waived his appeal in case No. 1, and was sentenced by said superior court to pay a fine of two hundred dollars, and that in default of the payment of said fine, that he be confined in the Kent county jail until the same was paid, not exceeding a period of thirty days, said thirty days to commence at the expiration of the imprisonment in case No. 2. The sentence in case No. 2 was to commence on the 12th day of January, 1894, and continue for a period of three months. The petitioner was thereupon committed to jail, and was retained in custody until the 7th day of April, when he was discharged under the first sentence, having been allowed six days good time. On the 6th day of April, a commitment was issued in case No. 1, to take effect April 7, or the day upon which the other sentence expired. Under this sentence, the petitioner claimed that his imprisonment was illegal, on the ground that it was cumulative, uncertain, indefinite, and not supported by the statutes of the State. It was contended that the sentence under which the respondent was detained had no certain day fixed for its commencement. On the part of the people it was claimed that the sentence was not vague or uncertain; that the first imprisonment was to continue for three months, and the second for thirty days; but it was claimed by the petitioner that, under the terms of the first sentence the petitioner might at any time have been discharged by paying the fine, and that the time, therefore, at which the second sentence was to commence was uncertain. The prisoner was discharged. No written opinion was filed.

Criminal cases pending in the Supreme Court.

The People vs. Albert E. Mason.  
The People vs. Severne Knudson.  
The People vs. Joseph Sweeney.  
The People vs. Robert Smith.  
The People vs. Frederick Brooks.  
The People vs. Charles Reid, *et al.*  
The People vs. Major Evans.  
The People vs. George A. Blakely.  
The People vs. Frank Parish.

The People vs. Frank Kabat.  
The People vs. Robert J. Hatton, *et al.*  
The People vs. U. G. Keefer.  
The People vs. Albert Meloche.  
The People vs. George Carmody.  
The People vs. Charles Sheffield.  
The People vs. Clay Johnson.  
The People vs. John Weaver.  
The People vs. Joseph Hanaw.  
The People vs. Donato Ezzo.  
The People vs. James Dailey.  
The People vs. William Considine.  
The People vs. James G. Clark.  
The People vs. Katharine J. Ketchum.  
The People vs. Dibby Harris.

The following criminal cases have been submitted to the court but not yet decided:

The People vs. Joseph Quinlan.  
The People vs. William Berry, *et al.*  
The People vs. William D. C. Germaine.  
The People vs. William H. Kindra.  
The People vs. George L. Laird.  
The People vs. Arthur Machen.  
The People vs. David W. Titman.  
The People vs. John J. Whittemore.

## SCHEDULE B.

---

This schedule contains a list of *mandamus* cases, *certiorari* and other proceedings, commenced by the Attorney General in behalf of the State, or commenced by other parties in which the State was directly interested.

George N. Davis, Trustee, *vs.* Huyatt & Smith Manufacturing Company.

This case was settled by the defendant's paying two hundred dollars and taking the machinery away from the Jackson prison.

Auditor General *vs.* Bay County Treasurer. *Mandamus* to compel county treasurer to pay over State taxes. Discontinued and new proceedings commenced. See Auditor General *vs.* Board of Supervisors of Bay County.

John W. Ewing *vs.* Daniel B. Ainger, *et. al.* Application for rehearing. Denied.

Although this was originally a private case in which the State was not represented in any way, yet in view of the fact that its decision involved the construction of an important public statute (section 502 Howell's Statutes) providing for the compensation of supervisors while performing committee work, it was deemed proper and advisable for the Attorney General to apply for a rehearing so far as the decision affected the interpretation of the statute.

The decision on appeal is reported in the 96 Mich., 587.

All that was said in the former opinion, in reference to this matter was: "It is evident from the reading of the statute that the Legislature intended to fix and establish the maximum amount that the board of supervisors could receive for services rendered to the county, and not leave it to the board to extend it beyond the limit fixed by the statute."

After this decision the Attorney General made inquiry of many of the county clerks as to the custom of the boards of supervisors, acting under this statute, in appointing committees to act outside of the session of the board, and the compensation allowed therefor.

The Attorney General also presented a brief upon the motion for rehearing claiming that the statute should be construed as allowing compensation for committee work while the board was *not* in session.

This also seemed to be the construction that had always been placed upon the statute by the several boards of supervisors of the State.

The statute provides: "Each member of such board of supervisors shall be allowed a compensation of three dollars per day for his services and expenses in attending the meetings of the board, and six cents a mile for each mile necessarily traveled in going to and returning from the place of such meeting, to be audited by the board and paid by the county; which compensation of three dollars per day shall extend to and be allowed for the first twelve days only for any continuous regular session, and six days only for an adjourned session of said board, and for the first three days only of any special session of said board, of which special sessions there shall be no more than two in any one official year, which said amount shall be in full for all services rendered and expenses in attending the meetings of such board of supervisors, and for all services and expenses incurred while acting under any committee of said board of supervisors during the session of said board, and any supervisor receiving any further or other compensation for such service shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars," etc.

The court overruled the motion, and adhered to its former construction of the statute, viz., that members of boards of supervisors were not entitled to pay for committee work while the board was not in session.

Reported in 97 Mich., 381; 56 N. W. Rep., 767.

State of Michigan vs. Estate of Bela M. Dunbar. Error to Delta.  
Assumpsit. Affirmed and decree modified.

The State presented to the probate court for allowance a claim against the estate of Bela M. Dunbar, an insane person, the claim being for moneys expended in caring for Mr. Dunbar in the asylum for the insane. The claim was allowed in probate court, and an appeal was taken to the circuit, where the claim of the State was again allowed (Attorney General's Report, 1893, p. 92), and the case was brought to the Supreme Court for review on the special findings made by the circuit judge, the question presented being whether the findings supported the judgment. The findings showed that the ward, Bela M. Dunbar, was committed to the Asylum for the Insane at Kalamazoo in 1868, and that from August, 1869, until January 1, 1879, he was maintained at the expense of the county of Delta, and that from January 1, 1879, till March 31, 1892, he was maintained at the asylums of the State at the expense of the State. Since March 31, 1892, the expense of his maintenance has been borne by his estate. The findings further showed that the expense of maintaining the ward by the State from June 30, 1885, until March 31, 1892, amounted to \$1,537.07. The circuit judge found that the State was entitled to have this sum allowed against the estate of the ward in the hands of the guardian. Four points were urged on the appeal: (1) That the probate court had no jurisdiction of the proceedings; that there was no authority of law for presenting claims against the estate of a ward under guardianship to the probate court; that the remedy was by action against the ward. (2) That the portion of the State's claim which accrued prior to December 5, 1886, was barred by the general statute of limitations. (3) That the proceedings

adjudging Bela M. Dunbar insane, and adjudicating that he was an indigent person, were irregular. (4) That the only fund in the estate of Dunbar was a fund received under a devise by will of his uncle, and that by the terms of the will this fund was not subject to the payment of this claim.

Section 6322, Howell's Statutes, provides that "every guardian appointed under the provisions of this chapter, whether for a minor or any other person, shall pay all just debts due from the ward and all expenses incurred by any county in the care, support or maintenance of such ward, upon the approval of the judge of probate, out of his personal estate, and the income of his real estate, if sufficient, and if not, then out of his real estate, upon obtaining license for the sale thereof, and disposing of the same in the manner provided by law." A stipulation between the parties contained the following: "All the parties interested in this hearing have been duly notified, or waived notice; and the question as to the liability of the said estate to the county of Delta, and the liability of said estate of Bela M. Dunbar to the State of Michigan, shall be heard before the probate court of the county of Delta, on the 13th day of March, 1893, at 1:30 o'clock, p. m., without further notice to either party." *Held*, that the section in question authorized the guardian to ask a probate judge to pass upon the question of whether a debt should be paid, and by the stipulation he had submitted that question to the court.

Howell's Statutes, section 8732, reads: "The limitations hereinbefore prescribed for the commencement of actions, shall apply to the same actions when brought in the name of the people of this State, or in the name of any officer or otherwise, for the benefit of the State, in the same manner as to actions brought by individuals." *Held*, that the statute applied to this case, and that the claim should be reduced to \$1,055.35, and interest from March 31, 1892.

The statute in force when the order for his admission to the asylum was made, was section 1934 of the Compiled Laws of 1871, which, among other things, provided that the probate judge should enter the proper order of admission in the journal of the probate court in his office. In this case there was such a certificate as was required by the terms of the act, and the authorities of the asylum had since acted upon it. It appeared that the order mentioned in the section was not entered on the journal by the judge. *Held*, that the certificate was all that was required, and the failure of the probate judge to thereafter enter the order in the journal did not invalidate it.

The point most insisted upon was that the fund in the hands of the guardian was not subject to the payment of the claim. The fund was received from the executors of the will of his uncle. At just what time it came into the hands of the guardian did not appear. The contention of the guardian was that the legacies were to be paid to the legatees themselves, for their own personal benefit, and not to their creditors or alienees, and that the same were to be received free and clear of alienation, anticipation, debts, contracts, and engagements. The following was quoted from the will: "I desire to guard against improvidence of females as well as males; to prevent alienation, anticipation, and diversion from beneficiaries to their creditors. To accomplish these ends, I direct that income and principal also shall be received by all beneficiaries free and clear of their debts, contracts, anticipations, and alienations, and of all liability for or by reason of the same, and from all levies, attachments, and executions. Pay-

ments must be made either directly to the beneficiaries, or upon their respective orders, signed not more than three months beforehand." It was contended by the defendant that the inheritance was not only beyond the reach of creditors while in the hands of trustees, but that it also came into the hands of the legatee free from all liability for or by reason of the claims of creditors. *Held*, that the fund received by the guardian could be applied to the support of such legatee in an asylum.

Reported in 57 N. W., Rep. 1103.

Edward H. Kennedy *et al.* vs. the Common Council of the City of Detroit.  
Application for writ of prohibition. Writ granted.

This case is ruled by Coffin vs. Election Commissioners, *post*.

Mary Stuart Coffin *et al.* vs. The Board of Election Commissioners of the City of Detroit. *Mandamus*. Writ denied.

These proceedings were instituted to test the validity of Act No. 138 of the Laws of 1893, which is as follows: "Section 1. *The People of the State of Michigan enact*, That in all school, village and city elections hereafter held in this State, women who are able to read the constitution of the State of Michigan, printed in the English language, shall be allowed to vote for all school, village and city officers, and on all questions pertaining to school, village and city regulations on the same terms and conditions prescribed by law for male citizens. Before any woman shall be registered as a voter the board of registration shall require her to read, and she shall read, in the presence of said board, at least one section of the constitution of this State in the English language. Sec. 2. All laws of this State prescribing the qualifications of voters at school, village and city elections therein, shall apply to women, and women who are able to read the constitution of Michigan, as above provided, shall enjoy all the rights and privileges and immunities and be subject to all the penalties prescribed for voters at such elections. Sec. 3. Women who are entitled to vote under the preceding sections of this act shall be subject to all laws relating to the registration of voters and be liable to all penalties attached to the violation of such laws, and their names shall be received and registered by the various boards of registration at the time and in the manner required by law for other voters."

Sections 13 and 14 of article 15 of the constitution are as follows: Sec. 13. "The Legislature shall provide for the incorporation and organization of cities and villages." Sec. 14. "Judicial officers of cities and villages shall be elected, and all other officers shall be elected or appointed at such time and in such manner as the Legislature may direct." In support of the act in question, it was contended that the sections of the constitution last quoted empower the legislature to provide qualifications for voters in village and city elections. *Held*, that said sections do not give the Legislature power to prescribe the qualifications of voters in such elections, the qualifications of electors "in all elections" being prescribed by article 7, section 1 of the constitution.

As bearing on the intent of the above quoted provisions of the constitution, the language of Justice Montgomery used in a concurring opinion

in which he gives a history of these sections from the records of the constitutional convention seems pertinent and is given *verbatim* below.

"As first reported by the committee on the organization of the government of cities and villages, this section read as follows: 'All judicial officers of cities and villages shall be elected at such time and in such manner as the Legislature may direct; all other officers of such cities and villages shall be elected by the electors thereof or appointed by such authorities thereof as the Legislature shall designate for that purpose.' See Convention Debates 1850, p. 326. The article, in this form, was ordered engrossed for a third reading. Id. 596. The journal of the convention shows that on the 31st day of July the article on cities and villages, which included the sections above quoted, was read a third time, passed, and, under the rule, referred to the committee on arrangement and phraseology. Journal of Convention, 312. When reported back by the committee on phraseology, the section read as follows: "Officers of cities and villages shall be elected at such times and in such manner as the Legislature may direct." The section was thereupon, on motion of Mr. McClland, amended by inserting the word "judicial" at the commencement of the section, and the words "all other officers shall be elected or appointed" after "elected," in the second line of the section. It is very clear that the purpose of the amendment was to correct the omission of the provision permitting the appointment of officers to be provided for, and it is very significant that if the committee intended by the change in phraseology to omit the provision that elective officers should be chosen by the electors of municipalities, no member of the convention discovered that such was the effect of their report. The inference is plain that the convention deemed the provisions of section 1, article 7, defining the qualifications of electors "in all elections," applicable to elections which might be held under this section."

Reported in 97 Mich., 188; 56 N. W. Rep., 567.

Otis Fuller vs. Attorney General. *Mandamus*. Granted.

The relator claimed the office of warden of the State House of Correction, and applied for a *mandamus* to compel the Attorney General to file an information in the nature of *quo warranto* against the incumbent, Eugene Parsell. The respondent's answer set up several reasons for refusing, viz.:

*First*, That said board having been appointed by the Governor, under section two, of Act number 118 of the Public Acts of 1893, and the Governor having, while proceeding under said law, relied upon and required a political test as therein named, said board was an illegal board; that the Governor of the State of Michigan had no constitutional right in the selection of a board to require a political test for an office, and whatever might be the construction of said section, provided the Governor had entirely disregarded its provisions as to a political test in making such selection, the board as constituted was an unconstitutional board.

*Second*, That even if the board was a constitutional and legal board, they could not appoint a man to an office where no vacancy existed, and then, in the interest of such party, as in this case, institute proceedings to carry out their illegal appointment by creating a vacancy to be filled by the party so illegally appointed.

*Third*, That the right to hold a public office under this statute and the other statutes relating to the office of warden, and which prohibit the

removal of a warden except for cause, mean a legal cause, and what is a legal cause is a question of law, and the causes assigned in this case, even had they been specifically set forth, could not constitute legal causes for the removal of a warden under the circumstances of this case, because the board could not acquiesce in and order the warden to appoint parties to office or purchase material, and then audit or allow the payment for such material or the payment to such parties, and then legally remove the warden for paying the money or making the appointments.

*Fourth*, That the appointment of the warden and ordering him to hold his office by express resolution on the 13th day of July, 1893, until the 31st of August, and the approval by the board of the appointments and ordering the several sums of money to be paid, as appeared by the vouchers and records of said board, estopped the board and the people of this State from complaining of such appointments or such payments.

*Fifth*, That the several objections made to the sufficiency of the charges and the specifications thereunder, that they were not specific, were good in law, and that without any regard to the legality of the charges, or the constitutionality of the board, the charges in this case were not sufficiently definite to notify warden Parsell of the specific matters which he would have to meet, and that such charges gave the board no jurisdiction whatever.

*Sixth*, That James T. Hurst, being the complainant in said cause, was disqualified from sitting upon and determining the truthfulness of his own charges; and even if the statute had expressly provided that the board itself could make the charges and act thereon, such a law would be absolutely void.

*Seventh*, That the several members of such board having expressed opinions as to the merits of said cause, and prejudged the case, and having appointed Otis Fuller in advance, and having engaged private attorneys, were disqualified to sit as judges upon said hearing.

*Eighth*, That the proceedings to remove a public officer in the State of Michigan is a judicial proceeding, and must be conducted by public authorities; that it is illegal for the board to employ or act with the same attorney who represented the party in interest in this cause under the facts and circumstances herein, and that a proceeding to enforce or carry out the result of such an action would not be in the interests of public policy.

*Ninth*, That under any circumstances Otis Fuller would not be entitled to take possession of the office until his bond was duly approved by the board, nor until he had taken the constitutional oath of office, and that warden Parsell, being in possession, would have a right, and it would be his duty, under any circumstances, to take notice of the fact as to when the bond was approved, and he would not be authorized to deliver over the possession of the property, money and effects of said prison to Otis Fuller until the bond was so duly approved by the board as provided by law.

*Tenth*, That Otis Fuller must show that he possessed the qualifications named in the statute before he could legally ask the public authorities to commence proceedings to place him in public office.

*Eleventh*, That it appearing that Eugene Parsall was preparing affidavits and intended to review the proceedings by *certiorari*, the proceedings were so questionable and irregular that no public interest could be served by requiring this respondent to commence a proceeding by *quo warranto* in this court based on such alleged removal.

*Twelfth*, That the board had attempted to remove warden Parsell for

official misconduct, as appeared by the resolution, but it did not appear from such resolution what fact or facts the board deemed official misconduct, unless said board erroneously deemed each of the specifications found official misconduct, many of which specifications, as a matter of law, under no circumstances could be designated official misconduct.

*Thirteenth*, That said resolution of removal pretended to remove warden Parsell for what the board designated "official misconduct," while the charges as made did not contain legal or specific charge of official misconduct.

*Fourteenth*, That Eugene Parsell, being an officer of the State of Michigan, the authority to remove was by the constitution of this State (article 12, section 8) vested in the Governor, and the said board of control, so called, had no right to make such removal.

*Fifteenth*, That act number 118 of the Public Acts of 1893 of the State of Michigan, under which said board assumed to act, in so far as it attempted to authorize the board of control to remove for cause, was unconstitutional and void.

In the fourteenth finding it was contended by the respondent that section 8, article 12 of the constitution applied to all public officers whose duties pertained to State affairs; that the wardens of the several prisons were officers of the State and that the authority to remove such officers was by the constitution of this State vested in the Governor; and the board of control, had no right to make such removal; that act number 118 of the Public Acts of 1893, under which said board assumed to act, in so far as it attempted to authorize the board of control to remove for cause, was unconstitutional and void.

Article 12, section 8 of the constitution makes it the duty of the Governor, when the Legislature is not in session, to examine into the condition of any public office, and the acts of any public officer, and to remove from office, for gross neglect of duty and malfeasance, any "officer of the State," specifying particularly the Attorney General, State Treasurer, and others, and to appoint his successor. *Held*, that this did not apply to officers, like the warden of the State House of Correction, so as to restrict to the Governor the power to remove him, and prevent the Legislature from vesting such power in the board of control.

Under the same finding, viz., No. 14, the constitutionality of the act giving power of removal to the board of control was also attacked under section 2, article 3 of the constitution, which reads as follows: "No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this constitution."

It was contended that the power to remove for cause involves the exercise of judicial power and *Dullam vs. Willson*, 53 Mich., 392, *Page vs. Hardin*, 8 B. Mon., 672, and *Clay vs. Stewart*, 74 Mich., 414, were cited in support of the proposition.

The court held that this provision in the constitution does not require that proceedings to remove a subordinate State officer for causes other than misconduct in office, crimes, and misdemeanors, shall be tried by the judicial department, so as to prevent the Legislature from vesting the power to remove in a superior officer or board, though the board or officer, in removing, performs an act which is judicial in its nature.

Under the twelfth and thirteenth findings the court held that the act giving the board of control power to remove "for cause" gave the right

to remove for incapacity and want of diligence. And further, that although in proceedings by a board to remove a subordinate officer for cause, the law requires the charges to be in writing, it is sufficient if they contain specific statements of infractions of the law or regulations, and specify the facts depended upon to show incompetency and unfitness, and which require a removal.

Under the sixth finding the court held that the fact that a member of the board of control, after investigation by the board into the condition and management of the House of Correction, signs the written charges against the warden for the purpose of his removal, does not disqualify such member from participating, as a member of the board, in its hearing and determination.

Under the second finding the court said that they would not inquire into the question of bad faith on the part of the board.

The first, third, fourth, fifth, seventh, eighth, ninth, tenth, and eleventh findings were not considered by the court.

Reported in 98 Mich., 96; 57 N. W. Rep., 33.

Mark Hance vs. Edgar O. Durfee, Judge of Probate. Petition for writ of prohibition. Granted.

This case is controlled by the decision in Chambe vs. Durfee, *post*.

Frederick Chambe and Margaret Schneck vs. Edgar O. Durfee, Probate Judge. Petition for writ of prohibition. Granted.

Relators were executors of the will of Mary Suess, deceased. The county treasurer applied to the probate judge to appoint appraisers of said estate to determine the valuation for taxation, under act No. 205, Public Acts 1893. Relators answered the petition, denying the jurisdiction of that court in the premises, on the ground that the act was unconstitutional. This objection in the answer was overruled. This proceeding was for a writ of prohibition against the probate judge restraining any proceedings under said act. The act is entitled "An act to provide for the taxation of certain transfers of property by gift, grant, inheritance, devise or bequest." Section 20 of the act provides: "All taxes levied and collected under this act shall be paid into the treasury of the State for the use of the State, and shall be applicable to the expenses of the State government and to such other purposes as the Legislature shall by law direct." Section 14, article 14, of the constitution of this State provides that "every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied." Section 1, article 14, provides that "all specific State taxes, except those received from the mining companies of the upper peninsula, shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the State debt, in the order herein recited until the extinguishment of the State debt, other than the amounts due to educational funds, when such specific taxes shall be added to and constitute a part of the primary school interest fund." It was contended by the relator that the tax provided by the act was one upon property, and not upon the trans-

fers, and therefore void, because it contravened section 11, article 14, of the constitution, which provides that "the Legislature shall provide a uniform rule of taxation, except on property paying specific taxes." The Attorney General contended that it was a tax upon transfers, and not upon property, and therefore the act could not be construed as coming within section 11, article 14, of the constitution, providing a uniform rule of taxation, and conceded that if it was to be regarded as a tax upon property it would contravene that provision. Section 1 of the act provides: "After the passage of this act a tax shall be and hereby is imposed upon the transfer of any property, real or personal, of the value of \$500 or over, or of any interest therein, or income therefrom in trust or otherwise to persons or corporations on real or personal property in the following cases." The section then specified what transfers should be made subject to the tax, which was at the rate of five per cent of the market value. Section 2 provides that transfers to a certain class of persons, being those nearest of kin, should not be subject to the tax unless the transfers were of personal property of the value of \$5,000 or more, and at the rate of one per cent of the value.

*Held*, that inasmuch as it was conceded that if the tax was to be regarded as a property tax, it violated the constitutional provision regarding uniformity, and if it was to be considered a specific tax, the Legislature had attempted by section 20 to apply the money arising from it to other funds than those specified in the constitution for specific taxes.

*Held further*, that since section 14 of article 14 of the constitution provides that every law which imposes a tax "shall distinctly state the tax and the object to which it is to be applied," the whole of such act was void for want of a valid provision as to the object to which such tax was to be applied.

Reported in 58 N. W. Rep., 661.

Senate of the Happy Home Club of America vs. Board of Supervisors of Alpena County. *Certiorari* to Alpena Circuit Court. Reversed.

Respondents brought to the Supreme Court by *certiorari* the proceedings had in the circuit court for the county of Alpena upon an application for *mandamus* to compel respondents to audit relator's bill for the cure of one Richard Kelley of the liquor habit, under the provisions of Act No. 207 of the Laws of 1893, popularly known as the "Jag Cure Act."

That act is entitled "An act to authorize the courts, justices of the peace and police justices of this State to permit those charged and complained against as disorderly persons on account of drunkenness or intoxication to give a special recognizance conditioned for such persons taking the cure for such drunkenness and intoxication, and for the adjournment of such case against such person for a limited time for this purpose, and to provide means for carrying out the same." The first section provides "that whenever any person shall be charged or complained as being a disorderly person on account of drunkenness or intoxication" etc., he may give a recognizance "in the penal sum of one hundred dollars with a good and sufficient surety to be approved by such court or justice of the peace or police justice, conditioned that such person will immediately take treatment for the cure of such drunkenness or intoxication, of some corporation organized under the statutes of this State for the purpose of administering

such cure and required by law to make and file reports in reference thereto; to be therein specified for the period of at least thirty days, and that such person will observe and obey all directions and regulations prescribed by those administering such cure, and that such person will not indulge in the use of intoxicating or malt liquors for the period of ninety days, and that such person will, at the end of sixty days from the date of said recognizance, appear before such court, justice of the peace or police justice, and answer the charge or complaint against such person." It was further provided that, upon giving the said recognizance, the cause should be adjourned for sixty days, "and if at the end of said sixty days mentioned in said recognizance said person shall appear and show that he or she has conformed to the said conditions mentioned in said recognizance up to that time, then such person shall be acquitted and discharged." It was further provided that, if he failed to show that he had complied with the provisions of the recognizance, he should be prosecuted for the original offense, or, if he failed to appear, his recognizance should be forfeited according to law. Section 2 provides that the justice shall "make inquiry into the circumstances and financial condition of such person, and if upon such inquiry and investigation such person is found to be in indigent circumstances and unable to pay for his or her said treatment and maintenance during the time of receiving the same, then the cost and expense of administering such cure and maintaining such person shall be a county charge against the respective counties in which such recognizances are given and filed, but said charge shall not exceed seventy dollars," etc. The same section further provides for the payment, by the board of supervisors or board of county auditors, "upon the certificate of said court, justice of the peace or police justice, that such person is in indigent circumstances and unable to pay for such cure and maintenance, and upon proof that such person has been properly treated and cured of such drunkenness or intoxication." This section further provided that the court should furnish a certificate of indigency to the corporation at the time the recognizance was given.

The statute providing for the punishment of disorderly persons allows the justice to cause the arrest and proceed to try the person charged; and upon conviction upon the trial, or if he pleads guilty, he may punish the offender by fine and costs, or imprisonment in the county jail or Detroit House of Correction, or he may require a recognizance for his good behavior for the period of three months. The act in question permitted the justice to accept a different recognizance, viz: one conditioned that the defendant would take the cure within a time specified, and conform to the rules and regulations of the corporation administering such cure, and that he would not drink intoxicating liquor for the period of three months. It further provided that upon appearing before the justice at the end of sixty days, and showing that he had conformed to the conditions of the recognizance up to that time, "he shall be acquitted and discharged." *Held*, that this, in effect permitted unofficial persons to prescribe rules which should acquit persons charged with crime, and that the law was therefore void, as it is not within the province of the Legislature to delegate to private corporations the power to make laws for the discharge of offenders.

Reported 57 N. W. Rep., 1101.

John Hurst, relator, vs. Frank R. Warner, respondent. *Mandamus.* Denied.

This was a proceeding in the circuit court of Chippewa county to compel the respondent, who was a justice of the peace, to receive a complaint for an alleged violation of rule 2 of the rules of the State Board of Health, as framed and published in accordance with Act 230 of the Laws of 1885, as amended by Act 47 of the Laws of 1893. The respondent contended that the law was unconstitutional on the ground that it was a delegation of legislative power. The circuit judge held to the same view and denied the petition. A writ of *certiorari* was granted by the Supreme Court and the case has been argued and submitted in that court, but not yet decided.

Attorney General vs. Augustine White, *et al.* *Mandamus.* Granted.

This was a proceeding to compel the respondent, who was supervisor of the township of Sheridan, Newaygo county, to spread the State and county taxes upon the assessment roll of his township.

The amount of State and county taxes had been apportioned to the said township by the board of supervisors, but the respondent refused, as above stated, to spread it upon the roll for the reason, as he claimed, that the board of supervisors had unjustly apportioned too much of the State and county taxes to his township.

He spread the township, school and highway taxes upon the roll and in that condition delivered it to the treasurer with his warrant annexed. The petition was filed in this case January 8, something over a month after the roll was delivered to the treasurer, and prayed for an order directing the treasurer to deliver to the supervisor the tax roll and warrant, and that the supervisor be required to assess the State and county taxes within five days, and then annex a new warrant and redeliver it to the treasurer.

The respondents made no showing on the return day of the writ, and an order was therefore issued in accordance with the prayer of the petition. No opinion was filed.

Attorney General vs. Clark Tinney, *et al.* *Mandamus.* Granted.

This proceeding involved substantially the same state of facts as Attorney General vs. White, *ante* and the same order was made as in that case.

John T. Rich, Governor vs. Board of State Canvassers. *Mandamus.* Writ granted.

This was a case brought for the purpose of getting a re-canvass of the votes on the four constitutional amendments voted upon at the spring election in 1893. One of these amendments, the amendment relative to the salaries of certain State officers, was declared carried by the Board of State Canvassers, by something like 1,600 majority when as a matter of fact it had been defeated by over 11,000 votes. This was discovered some time in January, 1894, and the Governor, by the Attorney General, asked for a

*mandamus* directing the board to make a re-canvass to conform to the facts. The writ was asked for more in an advisory way than in any other, as the board were willing to make the re-canvass. The power of the court to order a re-canvass was not considered. This question was raised on a petition for a re-count of the votes on the amendment relative to the Attorney General's salary voted upon in the spring of 1891. See *Rich vs. Board of Canvassers, post*.

No opinion was filed in this case.

Washington G. Wiley *vs.* Auditor General, *et al.* *Mandamus.* Denied.

An order to show cause was granted in this case, and an answer filed by the Auditor General and county treasurer respectively, but as the case was dismissed, on request of relator's counsel, without any ruling of the court, a statement of the facts here would seem irrelevant and unimportant.

John T. Rich, Governor *vs.* The Board of State Canvassers and the County Clerks of Gogebic and Gratiot Counties. *Mandamus.* Granted.

The petition in this cause was filed by the Governor as relator, and against the State Board of Canvassers and the county clerks of Gratiot and Gogebic counties as respondents.

The first and second paragraphs of the petition alleged the proposal of a constitutional amendment by the Legislature of 1891, relative to the salary of the Attorney General, and the voting thereon by the people, and the return of the vote and canvass made by the Board of State Canvassers.

The third paragraph alleged that in the county of Gratiot there were 626 votes for said amendment, and 1,316 against it.

The fourth and fifth paragraphs alleged that the votes in said county were duly canvassed and returned as provided by law.

The sixth and seventh paragraphs alleged that the State Board of Canvassers unlawfully rejected the vote of Gratiot county.

The eighth paragraph alleged that the State Board of Canvassers failed to send a messenger to Gratiot county to procure a corrected return.

The ninth, tenth and eleventh paragraphs alleged that in the county of Gogebic 319 votes were cast for said amendment and 38 against it, and that the same was duly canvassed and returned as provided by law.

The twelfth paragraph alleged that the returns on the amendment from Gogebic county were fraudulently changed after they were received at the office of the Secretary of State, State Treasurer and Governor, so that it was made to appear that there were 1,319 votes cast for said amendment, and 38 votes against it in the county of Gogebic, and that the Board of State Canvassers canvassed the votes from Gogebic county as being 1,319 for the amendment and 38 against it.

The thirteenth paragraph alleged that the vote as ascertained and determined by the Board of State Canvassers showed that the amendment had a majority of 1,287 votes, but alleged that if the State Board of Canvassers had canvassed the Gratiot county vote and had canvassed the vote from Gogebic county correctly, the amendment was defeated by 403 votes.

The petition then prayed for an order against the clerks of Gogebic and Gratiot counties, requiring them to send in amended returns.

The answer of the Board of State Canvassers substantially admitted the facts alleged in the petition.

The Attorney General, being the real party in interest, was permitted to file an answer.

He admitted the first and second paragraphs of relator's petition, but denied that the returns were made as provided by law. He also denied that the vote was incorrectly canvassed.

He alleged that the return from Gratiot county was insufficient in law and that the Board of State Canvassers rightfully rejected the same. The return from Gratiot county was in words and figures, as follows: "Office of clerk of Gratiot county. I. N. Cowdrey, clerk. Ithaca, Mich., April 14, 1891. Amendment to the constitution relative to the salary of the Attorney General—Yes, 626. Amendment to the constitution relative to the salary of the Attorney General—No, 1,316. Seal of court. I. N. Cowdrey, clerk."

On information and belief he denied the matters stated in the third paragraph of relator's petition. He alleged that the certificate of the county clerk of Gratiot county was not a true copy of the record.

He denied the matters stated in the fourth paragraph of relator's petition, and alleged that no proper or lawful canvass of the votes cast on said amendment in the spring of 1891, was ever had in the county of Gratiot.

On information and belief he denied the fifth paragraph of relator's petition.

He admitted that the State Board of Canvassers rejected the return from Gratiot county, and alleged on information and belief that the reason therefor was that the return was not properly authenticated.

That as to the eighth paragraph of relator's petition he had no knowledge, but alleged that under the laws of this State it was not the duty of the Board of State Canvassers to send a messenger to Gratiot county for a corrected return.

In answer to the twelfth paragraph of relator's petition, he denied on information and belief that the returns from Gogebic county were fraudulently changed after they were received at the office of the Governor, Secretary of State and State Treasurer, but admitted that the returns made to those several officers did not conform to the record of the votes in Gogebic county.

He admitted the matters stated in the thirteenth paragraph of relator's petition, also in the fourteenth paragraph. He further alleged that the canvass of the votes on said amendment was duly recorded in the office of the Secretary of State; that the Secretary of State also caused said amendment to be published, with the laws enacted by the Legislature of 1891; that at the time of the making of such canvass the Legislature was in session, and on information and belief he averred the facts to be that all the circumstances attending said canvass, including the rejection of the Gratiot county return, were well and publicly known to the members of said Legislature, and to the people of the State; that the canvass of said votes upon said amendment, including the canvass of the vote of Gogebic county, and the fact that no votes for or against the amendment were canvassed for Gratiot county, was published in the Legislative manual for the year 1891, at page 384b.

The relator was afterwards permitted to file affidavits of the county clerk and deputy county clerk of Gogebic county, to the effect that when they mailed the returns on said constitutional amendment to the several

officers at Lansing, they showed the vote to be 319 for said amendment and 38 against it.

The Attorney General then made a motion to amend his answer, and filed the following statement of facts, together with the formal motion, which motion had attached to it several affidavits:

"STATEMENT OF FACTS.

"In the original answer of the Attorney General he denied on information and belief the matters charged in the third paragraph of the relator's petition; that is to say, that there were six hundred and twenty-six ballots cast for said amendment and thirteen hundred and sixteen ballots cast against said amendment in Gratiot county.

Now the Attorney General desires to deny the matters alleged in the fourth paragraph, to wit: 'That the ballots so cast for and against said amendment by the electors of Gratiot county were duly canvassed by the board of county canvassers for said county, duly convened for that purpose, and that said board of county canvassers so convening and organized prepared a correct statement showing the number of ballots cast for and against said amendment in said county, and said statement was duly certified as correct and attested by the signatures of the chairman and secretary of said board, and a copy of said statement certified as aforesaid was delivered to the clerk of said county and recorded by him as required by law.'

The affidavit of I. N. Cowdry, who was clerk of Gratiot county in 1891 and 1892 distinctly states: 'That there was no written statement made out and signed by the chairman and secretary of the board, and filed with deponent, concerning the votes polled for and against the amendment to section 1, article 9 of the constitution, relative to the salary of the Attorney General.'

The affidavit further shows that after a statement was made of the votes given for Justices of the Supreme Court and Regents of the University, 'the board adjourned and went home,' and that afterwards, 'when the clerk made up the book of entries, he not only copied in the original statements delivered to him concerning the vote on Justices of the Supreme Court and Regents of the University, but he also placed on the book in figures, taken from the slips on which the total footing was made, the votes polled for and against the constitutional amendment relative to the salary of the Attorney General, and that he then signed his own name and the chairman's name to the book,' 'but that in truth and in fact, as above stated, there was no statement made, either on the book or in any other place, signed by the chairman and secretary, of the votes given on the constitutional amendment relative to the salary of the Attorney General.'

Now, as a matter of fact, the figuring done by the clerk is not correct. That is covered by the denial of the third paragraph of the relator's petition, and as a matter of fact, there was no canvass made by the board as required by law. The simple question is, can a clerk after a board has adjourned take the memoranda in his office and make up a canvass, which has never been certified to as provided by law. And if it appears right upon the face of the papers themselves that such canvass is not correct, can the Supreme Court of this State hold that a Board of State Canvassers should have counted such a canvass?

If this is the law, then there is no need of having any canvassing board

at all, and the law relative to having a board of county canvassers is simply directory. The county clerk, without any statute and without any authority of law, can make up a canvass, and if the Board of State Canvassers refuses to recognize such a canvass, three years afterwards the Supreme Court can authorize such illegal and unlawful canvass to be counted.

Is it for the interest of the people of this State that a canvass made by a county clerk, which is false in fact, and which was made after the board adjourned, shall be recognized for the purpose of defeating a constitutional amendment, which has been accepted by the Legislature of the State and acted upon by the people for three years?

If this amendment is allowed, and relator desires to join issue on a question of fact relative to the canvass, no objection is made thereto by this repliant, but I do insist that having had a right to answer, that an answer under the circumstances should be treated in the same manner as the answer of any respondent.

It cannot be possible that a Board of State Canvassers who are not in office at the time, and who have no personal knowledge of the facts, and on a petition sworn to by the Governor simply on information and belief and unsupported by any affidavits, can be used by the court against the affidavit of the clerk who was then in office and knows the facts, as the basis for counting out a constitutional amendment.

Relator certainly deemed the third and fourth paragraphs of his petition material. They are both denied. The copy of the book filed with the original answer shows that the figuring is not correct, and the affidavit of the clerk shows that no canvass was had, and the certificate of the present clerk shows conclusively that there is no such paper on file in his office."

---

The following is a copy of the main brief filed by the relator's counsel, Messrs. Geer and Williams:

"We understand that it is claimed by respondents, that this court has no jurisdiction to make an order requiring them to convene and canvass the returns. That when the Board of State Canvassers canvassed the returns and adjourned *sine die* it was *functus officio*, and that this court has no jurisdiction to give it new life. There can be found a few authorities which sustain that position under ordinary circumstances, but the great weight of authority is the other way.

In the cases which we have been able to examine, sustaining respondent's position, the contest was between two persons, both claiming to have been elected to the same office, and the court held that, as the title to the office could be decided by *quo warranto*, and as it would be necessary to resort to that writ to get possession of an office, even if a re-canvass resulted in the moving party getting a certificate of election, they would not sustain an application for *mandamus*, to have the returns re-canvassed. The party had another and complete remedy.

The question here, however, is much more serious than the mere right to an office. It has been certified to by the Board of State Canvassers, that the electors of the State have voted to change the constitution, the fundamental law of the State, when the fact is, that the electors by a large majority voted that there should be no change, and unless the truth of the matter can be determined and certified to by having the returns re-canvassed, the people of the State are without a remedy, and the constitution

will have been amended against their will, by means of forgery and fraud. We contend that there has never been a legal and complete canvass of the returns.

Judge Cooley, in the early editions of his work on Constitutional Limitations, seems to sustain respondent's position, but in the later editions, he says: "We should think the proper doctrine to be, that if the board adjourned before a legal and complete performance of their duty, *mandamus* would lie to compel them to meet and perform it." Cooley's Constitutional Limitations, 4th edition, 785.

If the return from Gratiot county was not properly certified to, it is as if no return was made, and the Board of State Canvassers should have procured a properly certified return. There was, therefore, not a complete performance of their duty in that regard.

In the case of Gogebic county, the return canvassed was a forgery, not the return certified to by the clerk of that county. There was therefore in fact no return from Gogebic county. The returns from Gratiot and Gogebic counties were never canvassed, and there was, therefore, not a legal and complete performance of the duty imposed on the State Board of Canvassers, and *mandamus* lies to compel them to perform it.

This court in recently requiring the Board of State Canvassers to re-convene and re-canvass the returns of the votes cast for the amendments in 1893, established no new rule in this State.

In Roemer vs. Canvassers, 90 Mich., 27, the writ issued to compel the board of city canvassers of Detroit to re-convene and re-canvass the votes for alderman. It was urged on the part of respondents in that case, that the court should not compel a recount by *mandamus*, but should leave the matter to be determined by a contest in the council. Mr. Justice Montgomery at page 30, says:

'We cannot accede to this view. Such a remedy could not precede the organization of the common council, and is manifestly inadequate. If the remedy by *mandamus* is not open in such a case, it follows that canvassing boards have the power wholly to thwart the expressed will of the people, if the usurpation of authority by the board be general; and while in the present case nothing appears which would justify us in inferring that any but honorable motives actuated the respondent, yet we cannot establish a rule which would make fraud on the part of such boards impossible of direct redress.'

Coll vs. Board of Canvassers, 83 Mich., 367.

Attorney General vs. County Canvassers, 64 Mich., 607.

Belknap vs. Board of Canvassers of Ionia Co., 54 N. W. Rep., 376.

The following authorities are to the same effect:

Lewis vs. Commissioners, 16 Kansas, 102.

State vs. the Board of Canvassers, 31 Pac. Rep., 879.

Smith vs. Lawrence, 49 N. W. Rep., 7.

The State vs. Peacock, 19 N. W. Rep., 685.

State vs. Stearns, 7 N. W. Rep., 743.

The State vs. Hill, 4 N. W. Rep., 514.

Long vs. the State, 22 N. W. Rep., 120.

The State vs. Gibbs, 13 Fla., page 55.

People vs. Hillard, 29 Ill., 413.

Alderson vs. Commissioners, 9 S. E. Rep., 863.

In State vs. Cavanaugh, 39 N. W. Rep., 431 the returns had been changed very much like the Gogebic returns so that they were held to be

forged. The court held that the board of canvassers would not be required by *mandamus* to canvass the forged votes. The converse should be true, and if the board of canvassers canvassed returns, supposed to be genuine, they should be required by *mandamus* to re-convene to canvass the true returns, when the forgery is discovered,

In a proceeding by *mandamus* to compel a board of canvassers to count a vote as returned by the officers of election, when it appears that the alteration has been made in the return of the vote, but the canvassers did not know whether it was made before or after the return was delivered to them by the officers of election, the court may inquire and determine what the return as delivered actually was, and will compel them to make a count accordingly.

State vs. Garesche, 65 Mo., 480.

McCreary on Elections, section 377.

Where the term of office of those who canvassed the returns has expired their successors in office will be required to convene and re-canvass the vote.

Belknap vs. the Board of State Canvassers, 54 N. W. Rep., 696.

State vs. County Judge, 7 Iowa, 186.

Clark vs. McKenzie, 7 Bush, 523.

The jurisdiction of the court to require the respondents to convene and canvass the returns as corrected seems to be well established, and the necessity that the court should exercise its authority in that regard is urgent."

---

The following is a copy of the supplemental brief filed by relators counsel:

## I.

"Mr. Kirchner in the first division of his supplemental brief assumes that this is a proceeding instituted for the purpose of determining from the admission of the parties whether the constitution was in fact amended, and that it is not proposed to canvass all the returns of the votes cast for and against the proposed amendment. There is no fact in controversy which it is proposed to have determined by the admission of the parties. The facts which make this proceeding necessary and proper are that the returns of the votes cast in Gratiot county were thrown out and not canvassed at all, and that what purported to be the returns from Gogebic county were not such returns at all, but a forged and spurious paper.

These facts have been conclusively established by competent evidence, and the question is, is the law such that the people of the State are powerless to have this great wrong, the result of forgery and fraud, corrected. That the power is vested in this court to require the respondents to convene and canvass the returns is clearly established by the authorities cited on page 5 of our original brief.

## II.

Counsel concedes, that if the matter in controversy were the private right of one to an office, the writ should issue to compel a new canvass to be

made. He says this case is not to be controlled by *Belknap vs. The Canvassers*, however, because there the wrong to be corrected could exist for but two years, while here the wrong which we seek to have corrected may endure for all time. We are surprised that the learned counsel should presume to urge such a monstrous doctrine on the attention of this court. Can it be possible that this court has power to require the Board of State Canvassers to convene for the purpose of performing a duty which would rectify a wrong that could endure but for two years, but that it has not the power to require them to convene and perform the same duty to correct a wrong which must endure as a wrong for all time? That in a matter of such vital importance to the people, the will of the Board of State Canvassers and not the will of the people is supreme?

Can the Attorney General, the only official interested in the result of this controversy, and in whose behalf alone Mr. Kirchner's brief is filed, be heard to say through his counsel that the court is powerless to interfere in the premises? Counsel says private rights are not involved. What then is his position before this court, and in what way can he be said to be representing a public right in his attempt to make perpetual a fraud upon the public.

The duty to canvass the returns of votes cast on a proposed amendment to the constitution is imposed upon the board by statute, which brings this case clearly within *Ayers vs. The Auditors*, 42 Mich., 422, and distinguishes it from the other cases cited on page 5 of counsel's brief.

### III.

*Double vs. McQueen*, 96 Mich., 45, and the other cases cited on page 6., which counsel says, "are on all fours with this case" are entirely different from this case and do not lend any support whatever to his theory. These are all cases where the question involved was the removal of a county seat, where the returns are canvassed by the board of supervisors.

Counsel seems to have overlooked entirely the difference between the powers of a board of supervisors when canvassing the returns of votes cast on the question of removing the county seat, and the powers of the Board of State Canvassers when canvassing the returns of votes cast on the question of amending the constitution.

Boards of supervisors in all their acts are practically independent of the courts, and in canvassing the returns of votes cast on the question of removing a county seat they are peculiarly so. They act judicially; they determine what votes should be counted, and what thrown out; what votes are legal and what fraudulent or irregular; they set the proceedings in motion which results in an election being held, and have absolute control of the whole matter. As they act judicially, and there is no means provided for reviewing their action, their conclusion once reached and announced is of course final.

The Board of State Canvassers do not act judicially, but ministerially, performing a duty imposed upon them by statute. They are, therefore, under all the authorities, subject to the direction of the court, and as clearly shown by the authorities cited in our original brief, if they adjourn without completing their work, *mandamus* will lie to compel them to convene and complete it. If they canvass all the returns but one, declare the

result and adjourn, and are then not liable to be required to convene and complete their work, they may canvass the returns from but one county, determine the result and adjourn, and their action be equally final. There is no middle ground; indeed, they could meet and determine that there was no election held at all and adjourn, and the public would be without a remedy.

#### IV.

Counsel on page 7 assumes that we are asking this court to canvass the returns, and quotes at great length from an argument made by Daniel Webster, to prove that this function cannot be properly exercised by the court. Certainly not, and there has been no such contention on our part. We only ask the court to require the Board of State Canvassers to make a canvass of all the returns, so that the will of the people, as expressed at the ballot box, may be evidenced by the correct record of their votes.

Miller vs. Johnson, 18 S. W. Rep., 522 (Ky.) is not in point. The constitution of Kentucky provided, that it might be amended or supplanted by a new one, adopted and promulgated by a constitutional convention, called by the Legislature. No provision was made for submitting the question of its ratification to the people. The convention, however, did submit the new constitution to the people, and it was ratified by a large majority. When the convention re-assembled, some changes were made, and the new constitution as changed was promulgated by the convention.

The forms of law did not require a submission of either the original draft of the new constitution or the changes made by the convention, to the people for their ratification, and the court held that as the constitution had been made and promulgated according to the forms of law and all departments of the government had recognized its validity as a constitution and important rights had grown up under it, they would not determine the question whether the new constitution could be adopted without being ratified by the people. No such question is raised in this case, nor is any public interest involved. The amendment affected the salary of but a single State officer, the Attorney General.

An amendment to the constitution which is the result of forgery, perjury and fraud is certainly not entitled to as much consideration as a constitution framed by the so-called 'frost bitten' convention, and if the latter in the opinion of so eminent a jurist as Judge Cooley, had no more legal standing than a ward caucus, we think it would not be possible for any one to determine the legal status of the former.

We are perfectly willing to 'rest a constitutional amendment upon the determination of the Board of State Canvassers, if they canvass the returns of all votes cast for and against it, by the electors of the State, and when it is discovered that any of the votes cast have not been returned and canvassed, or that any or all of the returns canvassed are forgeries, the Board of State Canvassers should be required to convene and canvass the returns of votes actually cast. The forged returns from Gogebic county determined the result. The case is not different, therefore, than it would have been if all the returns canvassed had been forged. Would counsel claim that if all the returns canvassed had been forged, and the true returns were subsequently discovered, that the Board of State Canvassers would not have the legal right to convene and canvass the true returns, and announce the

true result, or that this court would not have the power to require them to do so?"

---

The following is a copy of the brief filed by the Attorney General:

"It is not alleged nor claimed that the State Canvassing Board of 1891 committed any fraud or was aware that any fraud or mistake had been committed, and if the contention is right concerning Gratiot county, the fact that 1,000 votes were added to the majority in Gogebic county would not affect the people of this State in the least. The real question is, therefore, did the board rightfully reject the votes of Gratiot county.

It is not admitted by the return that the votes were rejected for the reasons stated on the return in the Secretary of State's office, and in fact that allegation is denied, and it is alleged on information and belief, that Gratiot county was omitted from the canvass because there was no legal return, and because there was no legal canvass by the county board of canvassers of the county of Gratiot.

While the Attorney General may be said to have a personal interest in this matter, he has no such interest in the case that he would ask the court to make any decision not fully supported by the laws of the State and the rules of the court already made.

The real question here presented has not heretofore been before this court.

In the Belknap-Richardson case, a recount was ordered for the purpose of furnishing to a claimant to an office a certificate of election which under the law, is *prima facie* evidence of title. The difference between the Belknap case and the one at the bar is this: The decision of the Board of State Canvassers in the Belknap case was not final and conclusive, and the certificate given in such a case is only a *prima facie* evidence of the right to an office. The ultimate decision in such a case was to be reached by the Congress of the United States. In this case the decision made is a final decision. The board are to count the votes and determine the result, and when they have determined the result they are to give a certificate of such determination to the Secretary of State. He is to record the certificate in a book where the original acts of the Legislature are recorded, and is to publish the result in the laws of the Legislature for the next session. All this has been done. The clear import from this language is that the determination of the board as to the question of fact is to be final.

The distinction between this case and the case of *Rich vs. Jochim*, decided a few days ago by consent of this court, consists in this: The board of 1891 passed upon the certificates actually before them, counting Gogebic county just as it appeared, and rejecting Gratiot county, while the board of 1893 did not count the certificates as they appeared before them, making a miscount in at least twenty-five counties. And again, in the latter case, the Board of State Canvassers who did the counting came before the court and admitted the mistake, and asked leave to correct the error. In the case at bar no notice or paper of any sort has been served upon the retiring board, and there is no way to ascertain what the ex-Secretary of State did concerning Gratiot county, unless it be now settled by affidavits. It is not, however, alleged in this petition that the Secretary of State neglected to do his duty. But the petition alleges that the board

did not send any messenger, etc. The answer to this is that the board are under no legal obligations to send any messenger. The statute provides for no such thing.

The presumption is that the Secretary of State did his duty. There was no dispute concerning that presumption when the Board of State Canvassers met, and they having acted thereon, and as I contend, legally and lawfully rejected Gratiot county, it is now too late to review their decision upon a question of fact, even though that power were vested in the court.

I have compared carefully sections 213, 214 and 215 of Howell's Statutes, with section 491, relating to the removal of county seats, and it seems to me that the decisions of this court concerning the removal of county seats, covers exactly the question here at issue.

It was clearly the intention of the Legislature, in canvassing votes upon the adoption of a banking law or a constitutional amendment, that the decision and determination of the board should be final, at least after it was determined, and the result had been published as provided by law.

In construing that section, in *Double vs. McQueen*, 96 Mich., 45, Mr. Justice Long, in delivering the opinion of the court, said: 'The decision of the board of supervisors, under the statute (Howell's Statutes, 491) in determining and entering upon their records the result of their canvass of the votes cast at an election regularly held, is conclusive for all purposes, and leaves no question open to contest afterwards, and the removal could not thereafter be defeated in the courts by showing that it was carried by an omission to return all the votes cast against such removal.' Citing

*Attorney General vs. Board of Supervisors*, 33 Mich., 289.  
*Attorney General vs. Board of Supervisors*, 34 Mich., 211.  
*People vs. County Treasurer*, 41 Mich., 6.  
*Hipp vs. Board of Supervisors*, 62 Mich., 456.  
*Attorney General vs. Board of Canvassers*, 64 Mich., 612.

At the time the constitution of this State was adopted, the statute under which this case was made was in force, and the right to count votes was therein expressly delegated to the political branch of the government.

The power to count votes is not judicial but political, and the result of a canvass on a constitutional amendment is final.

*Luther vs. Borden*, 7 Howard, 1.  
*Miles vs. Bradford*, 22 Md., 170.

The question as to what returns should be counted or whether they were regular on their face, was a question to be decided by the Board of State Canvassers.

*Peebles vs. Davis County Commissioners*, 82 N. C., 385.  
*O'Farrall vs. Colby*, 2 Minn., 180.  
*Hudmon vs. Slaughter*, 70 Ala., 346.  
*Patton vs. Coates*, 41 Ark., 111.  
*State vs. Randall*, 35 Ohio St., 64.  
*State vs. Board of Inspectors*, 74 Tenn., 12, 20.  
*State vs. Board of Canvassers*, 13 Fla., 55, 73.  
*Luce vs. Board of Examiners*, 153 Mass., 108.  
*Paine on Elections*, Sec. 604, 614.  
*Luce vs. Mayhew*, 13 Gray., 83.  
*People vs. Nordheim*, 99 Ill., 563.  
*Merrill on Mandamus*, Sec. 179.

The statute requiring returns to be certified to and attested is mandatory, and a return not thus authenticated cannot be received in a contest or by canvassers.

Opinion of the Justices, 68 Me., 587.  
*People vs. Nordheim*, 99 Ill., 553.  
*Simon vs. Durham*, 10 Ore., 52.  
 Opinion of the Justices, 70 Me., 560.  
*Lawrence County vs. Schmaulhausen*, 14 N. E. Rep., 255.  
*Luce vs. Mayhew*, 13 Gray., 83.

The ballot and return should be in the form prescribed by the joint resolution.

*People vs. Woodhull*, 14 Mich., 28.

The return from Gratiot county was not a copy of the book at all, as will be seen by comparison with the record, and the book does not show that the question was submitted to the people in the manner provided by law, and no voter would know what he was going to vote upon by simply seeing a ticket which read 'Amendment to the constitution—Yes; amendment to the constitution—No.'

It has been held that *mandamus* will not lie to compel an officer to do an act, which, without its command, it would not be lawful for him to do.

*Clark vs. Buchanan*, 2 Minn., 340.  
*Johnson vs. Lucas*, 11 Hump., 306.  
*State vs. Judge*, 15 Ala., 740.  
*Merrill on Mandamus*, Sec. 180.

Where the board has once performed and fully completed their duties in a case where their decision is final, they have no power to afterwards reconsider their determination and come to a different conclusion.

*State vs. Warren*, 1 Huston, (Del.) 39.  
*Swaine vs. McRae*, 80 N. C., 111.  
*State vs. Lamberton*, 37 Minn., 362.  
*Myers vs. Chalmers*, 60 Miss., 772.  
*People vs. Reardon*, 3 N. Y. S., 560.  
*State vs. Donnewirth*, 21 Ohio St., 216.  
 Opinion of Judges, 117 Mass., 599.  
*Hulseman vs. Rens*, 41 Pa. St., 396.

The tabulated statement is no part of the certificate, is not required by law, and cannot be used to impeach the finding and determination of the canvassers.

*State vs. Canvassers*, 36 Wis., 498, 507;  
*Attorney General vs. Barstow*, 4 Wis., 567;

Section 26t, 3d Howell's Statutes, provides for the publishing by the Secretary of State, bi-annually, of a Legislative manual, and it is provided, 'that said manual shall contain the constitution of the United States and the constitution of this State with all amendments thereto,' etc. \* \* \* 'A sufficient number of copies of said manual shall be published to supply the members and officers of the Legislature at the time of the publication of said manual, with one copy each; also a sufficient number of copies

to supply the following persons and officers with one copy each, viz: Governor and State officers, members and officers of the next following Legislature, members of State boards, principal officers of State institutions, senators and representatives in Congress from this State, United States circuit and district judges in this State, justices of the Supreme Court, and judges of the circuit and superior courts in this State, each newspaper published in this State, and the clerks regularly employed in the several State departments, and each graded school library in the State. That in addition to the foregoing there shall be published 4,100 copies of said manual

\* \* \* 3,700 copies of which shall be for distribution in such manner as may be directed by the Legislature in office at the time of publication.'

There were two editions of the Manual in 1891, both editions containing the vote on the salary amendment. The last edition at page 49 publishes the amendment to section 1, article 9, with a foot-note showing when it was amended. The amendment to the constitution was published in the session laws of 1891, at page 337.

The last edition of the Manual was authorized by the Legislature by concurrent resolution No. 5, found in the Public Acts of 1891, page 329.

Concerning the canvass from Gratiot county, there is no canvass where the result is written out in words at length as provided by law.

Section 187 of Howell's Statutes, which provides what a statement shall contain relative to a canvass, says: 'Each of said statements, the whole number of votes given, the names of the candidates, and the number of votes given for each, shall be written out in words at length.'

Section 193 provides: 'The votes of electors for and against such amendment shall be taken, canvassed, certified and recorded, and certified copies of the statement thereof shall be made and transmitted by the several county clerks to the Governor, Secretary of State and State Treasurer within the same time and in the same manner as the votes for State officers are by law required to be taken and canvassed and the statements thereof to be certified, recorded and transmitted.'

It needs no argument to show that a record which is not made according to law and which has been subject to change for three years, is a very weak document on which to set aside an amendment to the constitution of this State.

Any person who will add up the figures upon this tally sheet from Gratiot county will see that there now exists a discrepancy in the computation of at least one hundred votes. The question is, where did that change take place; and if it is changed in that regard can it be said that it is correct in other respects?

The real object of the law requiring the result to be written out in words at length was to protect the people against fraud. It is mandatory, and should be enforced by this court. Hence, even if the Secretary of State or the canvassing board had sent after returns from Gratiot county, the county clerk could not have furnished them a return which could have been legally counted.

In this same connection I desire to call the court's attention to the fact that in the amendment to the constitution in 1862, giving the Governor authority to remove State officers, twenty-nine counties out of fifty-seven made no report whatever. Can it be said as a question of law that we can now search over these counties, find that the votes were not properly returned, raise a question of fact as to whether the Secretary of State sent a messenger, and then have a recanvass of the votes so cast?

Not only this, but the statements on file in the Secretary of State's office show that the votes as returned were not canvassed in accordance with the schedule attached to the return.

In the county of St. Clair, the whole number of votes given for the amendment above referred to, as shown by the tabulated statement from the several townships, was one hundred and sixty-seven, and the votes against the amendment were ninety-three, and the same was canvassed by the Board of State Canvassers as sixty-eight in favor of the amendment and one hundred and seventy-two against it. Certified copies of the statement from the county of St. Clair, and a certified copy of the statement of the canvass of 1862 are herewith exhibited to the court."

The following is a copy of the brief filed by Otto Kirchner, of counsel:

I.

"This is not a proceeding that directly involves private rights.

It is claimed that the constitutional amendment providing for the increase of the salary of the Attorney General did not receive a majority of the votes cast thereon, notwithstanding the official determination of the Board of State Canvassers to the contrary.

The claim is not based upon an examination of all the facts that bear upon the canvass of the votes cast for and against the proposed amendment, but upon alleged errors in the returns of the votes cast in Gogebic county, and upon the rejection of the returns of the votes cast in Gratiot county.

If these errors are corrected, and the rejected returns from Gratiot county, as proposed to be amended, are received and canvassed, it is claimed a fair canvass will show that the proposed amendment was defeated; and that therefore the Board of State Canvassers should reconvene, make a new canvass, and declare that the proposed amendment to the constitution, which the board in 1891 declared had been carried, which has been 'recorded in the book in which the original acts of the Legislature are recorded;' and by State authority published as part of the fundamental law of the State, was in fact lost.

If this were a litigation involving private rights, in which the question whether a proposed constitutional amendment had been rejected or adopted is collaterally involved, it would (if the question can be litigated at all) be proper enough to let the determination of the question rest upon the admission of the parties, or upon such evidence as they saw fit to lay before the court. It would be binding upon no one but the parties themselves.

But this proceeding is not of that character.

The Governor intervenes in his official capacity against the respondents in their official capacity. The sole purpose of the proceeding is to determine whether a certain provision increasing the Attorney General's salary is part of the fundamental law of the State.

I submit that the question, so far as it may rest upon matter of fact, cannot be determined upon the admission of the parties. The constitution of the State must rest upon surer foundations.

The statutes (Howell's Statutes, section 193) provide that it must rest upon the canvass of the Board of State Canvassers upon returns made by the several county clerks.

The averments contained in the petition and answer, and the admissions,

express or implied, contained in the latter, cannot be made the basis of a determination by the court as to what forms part of the constitution of this State, for the reason already stated, to wit: that this proceeding does not directly involve private rights, but its sole object is to determine whether the proposed amendment was adopted as part of the constitution of the State.

It follows as a corollary from the very nature of the proceedings that the judgment of this court may not rest upon a new canvass of the votes cast in two out of the eighty and odd counties of the State. If a new canvass may be had it must rest upon all the votes cast for or against the proposed amendment.

Because nothing to the contrary has yet been made to appear, it will not do to assume that the canvass of the votes of other counties was correctly returned to, and properly canvassed by the Board of State Canvassers. *Non constat* it may yet be made to appear. It would then be the duty of the Board of State Canvassers at any time hereafter to notice it, and the result may show that the proposed amendment was carried after all. The canvass sought to be obtained by this proceeding must then be overthrown. There is no escape from this conclusion. The *mandamus* can only go to the Board of State Canvassers upon the theory that it is its duty to canvass according to the tenor of the writ. If such duty exists, in the present instance, it rests upon the State Board of Canvassers without any writ. There would then be no time within which inquiry into the adoption or rejection of a proposed constitutional amendment is foreclosed. The rule now invoked to correct alleged mistakes and to defeat alleged frauds will open the door for other and greater frauds and mistakes; and we may expect periodic diverse determinations whether a given provision forms part of the fundamental law of the land.

## II.

The determination of the Board of State Canvassers as to the adoption or rejection of a proposed constitutional amendment, the record thereof, in the book in which the original acts of the Legislature are recorded, and its official publication with the laws of the State are political acts which, when once accomplished are final and beyond the reach of the courts.

I am not unmindful that this court, in *Belknap vs. The State Board of Canvassers*, 95 Mich., 155, has by *mandamus* compelled the board to convene and make a new canvass of votes cast for candidate for member of congress. But in that case the private right of the relator, to wit, the right to hold a public office, was involved. The rights of the relator, so far as the Canvassing Board could determine them, were concluded by the action of the court.

The right there affected was to endure for two years only. A constitutional amendment may endure for all time.

The Board of State Canvassers is a constitutional board. It and the Board of State Auditors are composed of the same State officers, and both boards are created by section 4, Art. VIII, of the constitution.

In *Royce vs. Goodwin*, 22 Mich., 496, this court decided that it could not review the determination of the State Board of Canvassers as to the election of a person to the office of circuit judge.

In *Dewey vs. The Board of State Auditors*, 32 Mich., 191, relator asked for a *mandamus* to require respondents to act upon (not allow) relator's claim.

The court declined to entertain the motion, for the reason 'that by the constitution the respondents are made a separate and independent tribunal over which the Supreme Court has no supervisory control, and no jurisdiction by *mandamus* to coerce or direct their action.'

That ruling has been approved by this court in the following cases:

*Ambler vs. Auditor General*, 38 Mich., 751.

*Free Press Co. vs. Board of State Auditors*, 42 *id.*, 422.

None of these cases were referred to in the opinion of this court in the Belknap case, and I don't know whether this court intended to overrule them.

I am in doubt whether the doctrine of these cases applies to the action of the Board of State Canvassers in canvassing the votes cast upon a constitutional amendment, for the reason that the duty of the board in that regard is imposed by statute, and not by the constitution.

I fail to see why, on principle, that should make any difference. But in *Ayers vs. the State Board of Auditors*, 49 Mich., 422, this court intimated (p. 428), that the doctrine of the Dewey case did not apply to duties imposed on the board by statute, but the reasoning and ruling of this court in *Sutherland vs. The Governor*, 29 Mich., 320, is not in harmony with such a doctrine.

If this court should now adhere to the doctrine of the Dewey case, and of *Royce vs. Goodwin*, and apply the doctrine of either case to this case, there would be an end to this controversy.

But I prefer to place myself upon higher grounds.

I have referred to these cases for the reason that they are in the line of this discussion. I submit them, with my comments thereon, for what they are worth.

The Belknap case establishes no principle involved here except that the Board of State Canvassers is a continuing body, and is not affected by a change of official incumbency. That we do not question.

The case itself has been, I submit, already sufficiently distinguished from this, on principle.

This court has, for twenty years, uniformly held the doctrine that the political actions of canvassing boards are not subject to review by the courts, although sought to be impeached for actual fraud.

In *Double vs. McQueen*, 96 Mich., 45, this court said:

'The decision of the board of supervisors under the statute, in determining and entering upon their records the result of their canvass of the votes cast at an election regularly held, is conclusive for all purposes, and leaves no question open to contest afterwards, and the removal (of a county seat) could not thereafter be defeated in the courts by a showing that it was carried by an omission to return all the votes cast against such removal.'

See also:

*Attorney General vs. Board of Supervisors*, 33 Mich., 289.

*Same vs. Same*, 34 *Id.*, 211.

*People vs. Co. Treasurer*, 41 *Id.*, 6.

*Hipp vs. Board Supervisors*, 62 *Id.*, 456.

*Attorney General vs. Board of Supervisors*, 64 *Id.*, 612.

The statutes (Howell's Statutes section 491) under which the board of supervisors act in canvassing the returns made of votes cast upon the loca-

tion of a county seat, is identical with the statute under which the Board of State Canvassers acts, in canvassing the return of votes cast upon the submission of a proposed constitutional amendment.

I submit that *Double vs. McQueen*, and the other cases cited in connection therewith, are on all fours with this case, and conclusive against relator's contention.

The impolicy of leaving the verity of the fundamental law dependent upon the result of judicial inquiry has always been recognized by the courts.

In *Luther vs. Borden*, 7 Howell's, 1, it was sought to establish the adoption of a constitution outside of political action.

Chief Justice Taney, speaking for the court (p. 39), said:

'Certainly the question which the plaintiff proposed to raise by the testimony he offered, has not heretofore been recognized as a judicial one in any of the State courts. In forming the constitutions of the different States, after the declaration of independence, and in the various changes and alterations which have since been made, the political department has always determined whether the proposed constitution or amendment was ratified or not by the people of the State, and the judicial power has followed its decisions.'

Mr. Webster was one of the counsel for plaintiff in that case.

In the course of his argument,\* he said:

'And first, these matters are not of judicial cognizance. Does this need arguing? Are the various matters of fact alleged, the meetings, the appointments of committees, the qualification of voters, is there any one of all these matters of which a court of law can take cognizance in a case in which it is to decide upon sovereignty? Are fundamental changes in the form of government to be thus proved?'

The answer of the court to those questions has already been given.

In the course of his argument (*id.*, p. 235), Mr. Webster quoted from the charge of Chief Justice Durfee to the jury, on the trial of Mr. Dorr for treason, thus:

'The main ground upon which the prisoner sought for a justification was that a constitution had been adopted by a majority of the male adult population of this State voting in their primary, or natural capacity or condition, and that he was subsequently elected, and did the acts charged as governor under it. He offered the votes themselves to prove its adoption, which were also to be followed by proof of his election. This evidence we have ruled out. Courts and juries, gentlemen, do not count votes to determine whether a constitution has been adopted or a governor elected or not. Courts take notice without proof from the bar, what the constitution is or was, or who is or was the governor of or over our State. It belongs to the Legislature to perform this high duty.† It is the Legislature which in the exercise of its delegated sovereignty counts the votes and declares whether a constitution be adopted or a governor elected or not, and we cannot revise and reverse their acts in this particular without usurping their power.

'Were the votes on the adoption of our present constitution, now offered here, to prove that it was or was not adopted, or those given for the governor under it to prove that he was or was not elected, we could not receive the evidence ourselves, we could not permit it to pass to the jury. And why not? Because, if we did so, we should cease to be a mere judicial

\* Works of Daniel Webster, Vol. VI, p. 236.

† The Legislature in Rhode Island acts as the canvassing board.

and become a political tribunal, with the whole sovereignty in our hands. Neither the people nor the Legislature would be sovereign. We should be sovereign, or you would be sovereign, *and we should deal out to the parties litigant here at our bar sovereignty to this or that according to rules or laws of our own making, and therefore unknown to the courts.*

'In what condition would this country be if appeals could be thus taken to courts and juries? This jury might decide one way and that another, and the sovereignty might be found here today and there tomorrow.

\* \* \* \* \*

'Were this instrument offered as the constitution of a foreign state, we might perhaps, under some circumstances, require proof of its existence, *but even in that case, the fact would not be ascertained by counting the votes given at its adoption, but by the certificate of the Secretary of State, under the broad seal of the State.*'

In *Miller vs. Johnson*, 18 S. W. Rep., 522 (Ky.),\* voters and taxpayers sought to obtain an injunction against the Public Printer and the Secretary of State, to enjoin the one from printing the instrument promulgated by the Constitutional Convention, and to enjoin the other from preserving it among the archives of the State as the constitution, and that it be declared spurious and invalid.

The court (p. 523) said:

'The instrument which we are asked to declare invalid as a constitution, has been made and promulgated according to the forms of law. It is a matter of current history that both the executive and legislative branches of the government have recognized its validity as a constitution, and are now doing so. Is the question, therefore, one of judicial character? Does its determination fall under the organic power of a court?'

The court (p. 524) further said:

'If a wrong has been done, it can, and the proper way in which it should be remedied is by the people acting as a body politic. It is not a question whether merely an amendment to a constitution made without calling a convention has been adopted as required by the constitution if it provides how it is to be done. Then unless the manner be followed, the judiciary, as the interpreter of the constitution, will declare the amendment invalid, (citing authorities).† But it is a case where a new constitution has been formed and promulgated according to the forms of law. Great interests have already arisen under it; important rights exist by virtue of it; persons have been convicted of the highest crimes known to the law according to its provisions. The political power of the government has in many ways recognized it, and under such circumstances it is our duty to treat and regard it as a valid constitution, and now the organic law of our commonwealth. We need not consider the validity of the amendments made after the convention reassembled. If the making of them was in excess of its power, yet as the entire instrument has been recognized as valid in

\* A constitutional convention, duly called, had framed a constitution. It was submitted to the people, who approved it by a large majority. Thereupon the convention re-convened, canvassed the vote, made several amendments and without submitting the amendments to the people, proclaimed the instrument as thus amended as the constitution of the State.

† The proposition as here broadly stated is not borne out by the opinion, because the court refused to consider the validity of the amendment made by the convention. The cases cited are based on *Koehler vs. Hill*, 80 Iowa 513. That case involved the question whether a constitutional amendment had been adopted. The constitution required the amendment to be first adopted by the Legislature. The journal showed it had not been so adopted. *Held*, the amendment was no part of the constitution, although it had been approved by the people.

No such question is presented here. The question is, what effect shall be given to the proceedings of the canvass and the subsequent enrollment and publication of the amendment?

the manner suggested, it would be equally an abuse of power by the judiciary and violative of the rights of the people (who can, and properly should remedy the matter if not to their liking), if it were to declare the instrument, or a portion, invalid, and bring confusion and anarchy upon the State.'

*Culver vs. Freeman*, 24 Ala., 107:

A proposed constitutional amendment was, with others, duly submitted to, and approved by, the people; but the Legislature, in declaring, by resolution, what amendments had been carried, omitted the one in question. *Held*, it was no part of the constitution. The court (p. 107) said:

'To the Legislature was confided the sole power of deciding how the people voted; to the judiciary the questions did they vote, and have other steps been taken to change the organic law?'

Our contention is not inconsistent with judicial inquiries, made by this court, whether an alleged statute actually received the constitutional assent of the Legislature.

Such action is based upon the theory that the legislative journals are the best evidence, and this court has refused to go outside of what appeared on the face of such journal; and in the absence of a conclusive showing, by the journal, that the statute failed to receive the constitutional assent, has held the executive sanction to exclude all further inquiry. (*Common Council vs. Assessors*, 91 Mich., and case cited, p. 81 *et seq.*)

The only legal evidence of the vote cast for or against the proposed amendment, is the canvass made by the Board of State Canvassers. No other is provided or, indeed, practicable.

If the technical legality of the canvass can be made the subject of judicial inquiry, we can go back to the first constitution of the State, for the reason that all subsequent acts are either proximately or remotely dependent upon it.

The State of Michigan was admitted into the Union on a constitution framed by the so-called "frost-bitten" convention, which, Judge Cooley says, had no more legal standing than a ward caucus.\* That constitution had no validity outside of its recognition by the political departments of the State, and of the Federal government.

It is the corner-stone of all subsequent constitutions and statutes. If it may rest upon the recognition of the political departments of government, I think it safe to rest a constitutional amendment upon the determination of the Board of State Canvassers, the only tribunal competent to declare whether or not it received the popular assent. If it may not rest there, when, if ever, will the constitution of the State be established? When, if ever, is it safe to act upon it?"

The opinion of the court, delivered by Justice Montgomery, is as follows:

"At the election held in this State in the spring of 1891, there was submitted to the electors a proposed amendment to article 9, section 1, of the constitution, relative to the salaries of State officers, the effect of the amendment, if adopted, being to increase the salary of the Attorney Gen-

\* *History of Michigan*; Commonwealth series, pp. 228-4.

See also the history and status of the convention, and the constitution it framed; together with the debates in Congress thereon, as stated by Judge Jameson in his "Constitutional Convention," § 203 *et seq.*

eral to \$2,500 per annum. Upon the canvass as made by the Board of State Canvassers, the amendment appeared to have received a majority of 1,287 votes in the State, and the result was so determined and declared by the board. On the 29th of January of the present year, a petition was filed by the Governor, the Attorney General being the interested party, asking that the Board of State Canvassers be reconvened and required to recanvass the votes cast, the petition alleging that the board of 1891 failed in its duty, in that no canvass of the vote cast in the county of Gratiot was made, and that this county gave 1,316 negative votes on the proposition, and but 626 in its favor. The petition also alleges that the returns from the county of Gogebic were fraudulently changed by adding 1,000 to the affirmative vote, so that, as a matter of fact, the amendment was defeated in the State by more than 400 votes. There can be no question that the returns from Gogebic county were falsified. But it is insisted by the Attorney General that, the Board of State Canvassers having actually determined the result, there is no power to review their proceedings, either directly or collaterally, and that the determination must stand; and, secondly, that the returns from the county of Gratiot were irregular, and therefore the board was justified in throwing out the returns wholly, and was not bound to send a messenger for an amended return; and, thirdly, that if it be held that the board neglected a duty in this last respect, the record of the canvass in Gratiot county shows that the statute relative to the canvass of votes was not complied with, and that a return taken from such records would not have been in a form which could have been recognized by the Board of State Canvassers, and hence that the forgery of the Gogebic returns did not in fact change the result, and that the recanvass of the returns would not result in reversing the determination reached by the board in its original canvass, as announced.

1. It is contended that the authority of the Board of State Canvassers in determining the question of whether a constitutional amendment has been adopted is similar to that exercised by a board of supervisors in canvassing the votes, and determining whether a proposition to remove a county seat has been adopted; and that it has been held under various conditions that the court will not review the decision of the board of supervisors in determining such result. *Attorney General vs. Board of Supervisors*, 33 Mich., 289; *People vs. Board of Supervisors*, 34 Mich., 211; *People vs. Treasurer*, 41 Mich., 6; 2 N. W., 181; *Hipp vs. Board*, 62 Mich., 456, 29 N. W., 77; *Attorney General vs. Board of County Canvassers*, 64 Mich., 612, 31 N. W., 539; and *Double vs. McQueen*, 96 Mich., 45, 55 N. W., 564. The authority conferred upon the board of supervisors is defined in section 491, of Howell's Statutes, which, after providing for the submission of the question, the manner of voting, and canvass of the votes, and the transmission of the statement of the result to the county clerk, further provides as follows: 'The board of supervisors, for the purpose of ascertaining the result of such vote in such county, shall examine such statements and certificates and canvass the votes therein certified, and shall determine and declare the result of the vote in the county, and such result shall be entered upon their records; and in case the result shall be in favor of the proposed removal, they shall provide for such removal, together with all the records and papers of such county, within one year after such result shall be ascertained and determined, as aforesaid, by them, and shall remove the same as soon as suitable buildings have been provided for the reception thereof, and they shall enter upon their records the time when such removal shall

be deemed to have taken place, and from and after that time, the place so designated shall be and continue the county seat of said county for all purposes whatsoever.' In the first case cited, this statute was construed, and it was said: 'It is impossible, as it seems to us, to give due force to this language without holding that the decision of the supervisors was meant to be, and must be, conclusive. There is no intimation that any right to contest it was to be left open afterwards; but their action is to settle the question of the removal "for all purposes whatsoever." It could not settle that question if a judicial review were still the right of dissatisfied parties. The question was one of a nature peculiarly proper to be submitted finally to their determination, and this consideration is not without its force when the question is one of construction. But there are other considerations bearing in the same direction, which may well be illustrated by the present case. The diligence of the relator enabled him to present his complaint before the removal to Baldwin had been perfected, but that is a circumstance that may not exist in the next case that arises. The circuit judge is required to hold his courts in the courthouse provided for him, and he cannot lawfully hold them elsewhere, except when the county has no courthouse at all. The officers of the court—the sheriff and clerk—are required to keep their offices and records at the county seat. If the circuit court in chancery could take cognizance of this case, it can of any similar case; and perhaps in the next case, sitting at the new county seat, it will be called upon by information to make solemn decision that it has no authority to decide, and to take jurisdiction for the purpose of holding that, sitting where it does, it has no jurisdiction at all. This would be the anomalous and absurd position in which a judge might be placed if he should assume to take cognizance of such a question.' It will be observed that not only is the board to make the determination, but the same section provides for action by the board based upon this determination. The reasons for holding their decision final, which do not obtain in favor of the construction of the statute governing the Board of Canvassers, which is contended for by counsel for the Attorney General, are strongly stated in the language of Mr. Justice Cooley, above cited.

Turning to the provision for canvassing the votes on a constitutional amendment, we find that it reads as follows (1 Howell's Statutes, §§ 213, 214): 'The secretary shall lay before the board the statement received by him of the votes given in the several counties for or against such amendment to the constitution. \* \* \* The board shall then proceed to examine such statements, and to ascertain and determine the result, and shall make and certify under their hands, a statement of the whole number of votes given for, and the whole number of votes given against, such amendment to the constitution, \* \* \* and they shall thereupon determine whether such amendment to the constitution \* \* \* has been approved and ratified by a majority of the electors voting thereon, and shall make and subscribe on such statement a certificate of such determination, and deliver the same to the Secretary of State.' No action by the board, as a board, is to be predicated upon this finding. The language is almost identical with that which provides for the canvass of votes for State officers, sections 208 and 209; the latter section providing that 'the canvassers shall certify each statement made by them to be correct, and subscribe their names thereto; and they shall thereupon determine what persons have been, by the greatest number of votes, duly elected to each respective office, and make and subscribe on each statement a certificate of

such determination, and deliver the same to the Secretary of State.' And section 137 makes provision for the canvass of votes cast for member of Congress, and provides that 'the returns and canvass of votes given thereon, shall be proceeded and determined in the same manner herein provided for the same officers to be elected at general biennial elections.' So, it will be seen that the duty is imposed upon the board of determining what person has been elected representative to Congress, by language just as imperative as that contained in section 214, relative to the determination of the question of whether an amendment to the constitution has been adopted. Yet we held in *Belknap vs. Board*, 95 Mich., 155, 54 N. W., 696, that a recanvass of the vote for member of Congress might be directed by mandamus after the expiration of the term of office of the old board, and after such board had made the canvass, entered their determination, and issued a certificate.

It is contended that the determination of the question whether an amendment to the constitution is carried involves the exercise of political, and not judicial, power. If this be so, it follows that the promulgation of any purported amendment by the executive, or any executive department, is final, and that the action cannot be questioned by the judiciary. But, with reference to the conditions precedent to submitting a vote to the people it has been repeatedly held, by courts of the highest respectability, that it is within the power of the judiciary to inquire into the question, even in a collateral proceeding.

See *Koehler vs. Hill*, 60 Iowa, 543, 14 N. W., 738, and 15 N. W., 609.  
*State vs. Tuffy*, 19 Nev., 391, 12 Pac. 835.

*Collier vs. Frierson*, 24 Ala., 107.

*Opinion of the Justices*, 6 Cush., 573.

*State vs. McBride*, 4 Mo., 303.

*State vs. Swift*, 69 Ind., 505.

*Westinghausen vs. People*, 44 Mich., 269, 6 N. W., 641.

It is to be noted that, under section 1 of article 20 of the constitution of the State, no amendment can become a part of the constitution until ratified by a vote of the people. One prerequisite is equally as essential as the other. The amendment must first receive the requisite majority in the Legislature, and afterwards be adopted by the requisite vote. The question here involved is not whether the court will, in a collateral proceeding, go into proofs to ascertain whether the board of canvassers has committed an error, but whether in a direct proceeding, when it appears that a palpable mistake has been committed, due in part to an omission of duty and in part to a fraudulent and criminal alteration of the returns upon which the determination of the board is based, the board itself may not right the wrong committed, and may not be required to do so. It is not to be implied that the present board requires the mandate of this court, except as an assurance of authority. We have recently in an unreported case of *Rich vs. Board of Canvassers*, passed upon the identical question here involved. It is true this case was not argued, and, in view of the importance of the question, we should not feel bound to follow this holding, if convinced that we were then in error. But the consequences of holding that the determination of the board of canvassers is forever conclusive, and that no matter how flagrant the fraud perpetrated upon the board, or how gross their own neglect of duty, the determination is to stand for all time, and an alleged amendment become a part of the organic law, which, it can be demonstrated beyond perad-

venture, never received the requisite vote from the electors, are such that we should adopt such construction of the statute only when convinced that no other is open. The able argument of counsel for the Attorney General has failed to convince us that the action of the board is not subject to direction by the court by its process of *mandamus*. We are not able to find sufficient evidence of the legislative intention that the first determination of the board, induced by fraud, or reached by disregarding the mandates of the statute, is to be forever final. It is the fact of a majority vote which makes the amendment a part of the constitution. We therefore adhere to the conclusion reached in the case of *Rich vs. Board of Canvassers*, above referred to. There is abundant authority, not only in this State, but in other states, asserting the power of the court to compel by *mandamus* the reconvening of a board of canvassers and a recanvass of the vote.

See *Smith vs. Lawrence* (S. D.) 49 N. W., 7.  
*Long vs. State* (Neb.) 22 N. W., 120.  
*State vs. Hill*, 10 Neb. 58, 4 N. W., 514.  
*People vs. Hilliard*, 29 Ill., 413.  
*Ex parte Strong*, 20 Pick. 484.  
*State vs. Garesche*, 65 Mo. 480.  
*State vs. Board of State Canvassers*, 36 Wis., 498.  
*People vs. Nordheim*, 99 Ill., 553.  
*State vs. Berg*, 76 Mo., 136.  
*Cooley Const. Lim.* § 784, Note 5, and cases cited.

2. As the canvass made by the board, with the Gogebic vote corrected would still show a majority in favor of the amendment if the vote of Gratiot county be not counted, it becomes necessary to inquire whether the board properly excluded the vote of this county. The only report from Gratiot county was as follows: 'Ithaca, Mich., fourteenth of April, 1891. The amendment to the constitution relative to the salary of the Attorney General: Yes, 626. Amendment to the constitution relative to the salary of the Attorney General: No, 1,316 votes.' Signed, 'I. N. Cowdry, Clerk,' with the seal attached. The statute provides (section 187): 'In each of said statements the whole number of votes given, the names of the candidates, and the number of votes given to each, shall be written out in words at length; and each statement shall be certified as correct, and attested to by the signatures of the chairman and secretary of the respective boards, and a copy of each, thus certified and attested, shall be delivered to the county clerk, and recorded by him in a suitable book to be provided by him for that purpose, at the expense of the county, and kept in his office.' Section 190 provides that 'the county clerk shall prepare and certify under his hand and seal of office three copies of the statement of votes given, after he shall have received such statement from the board of county canvassers; each of which statements he shall seal up in an envelope, and direct one of each to the Governor, one each to the Secretary of State, and one each to the State Treasurer, and transmit the same by mail, within five days after the county canvass.' Section 193 provides that 'whenever any amendment shall have been proposed to the constitution, and agreed to, and submitted to the people, the votes of the electors for and against such amendments shall be taken, canvassed, certified and recorded, and certified copies of the statement thereof shall be made and transmitted by the several county clerks to the Governor, Secretary of State, and State Treasurer, within the same time and in the same manner as the votes for State officers are by law required to be taken and canvassed, and the statements thereof to be cer-

tified, recorded and transmitted.' Section 205 provides that if 'if from any county clerk, no such statement shall have been received by the Secretary of State, the Governor, nor the State Treasurer, within the times limited, the Secretary of State shall forthwith send a special messenger to obtain such statements and certificates from such county clerk; and such clerk shall immediately, on demand being made by such messenger at his office, make out and deliver to him the statements and certificates required.' This last provision clearly evidences the intention of the Legislature that the error or omission of duty by the county clerk should not result in disfranchising the voters of any county. Under this section, if the instrument returned was not conceived to be a sufficient return, it was the plain duty of the board to dispatch a messenger to obtain a correct copy of the canvass. It is mockery to say that the paper is of sufficient authenticity to be treated as a return for the purpose of disfranchising the voters, and yet is not sufficiently formal to be recognized by the board. If it was so invalid as not to be considered a return for the purpose of being considered in the canvass, it was no return. Speaking to precisely the same point, the supreme court of Illinois, in *People vs. Nordheim*, 99 Ill., 553, said: 'Inasmuch as these incomplete returns were, in contemplation of law, no returns at all, it follows that, at the time of this application, the judges and clerks of election in these precincts had made no returns to the town clerk, as required by the statute.' It is apparent that the return was not a copy of the canvass, but it does not appear that it was excluded for this reason; but by a marginal entry in red ink it was stated that it was thrown out because of having no clerk's certificate. In referring to a similar statute, the terms of which were that 'the board may dispatch a messenger to the inspectors who made the returns, commanding them to complete the returns in the manner specified by law,' the supreme court of Wisconsin, in *State vs. Board of State Canvassers*, 36 Wis., 498, say: 'It is not necessary for a person to be a lawyer in order to know that the word "may," as first used in the statute above quoted, means "must." Any one would so read it who has sufficient intelligence to comprehend that the preservation of our system of free government is impossible unless the will of the people, lawfully expressed through the ballot box, is respected and obeyed.' We think it is altogether clear that there was a plain neglect of duty in failing to send a messenger for corrected returns.

It is insisted, however, that the *mandamus* ought not to issue, for the reason that the original canvass of Gratiot county appears so imperfect that, if a copy of the returns had been before the board, the vote should not have been counted. We have before us a duly-authenticated copy of the canvass, a copy of which has been also returned to the Governor, Secretary of State, and State Treasurer. So much of the canvass as relates to the constitutional amendment is as follows: 'At the general election held on Monday, the sixth of April, in the year 1891, \* \* \* \* \* the whole number of votes given for the amendment to the constitution relative to the Attorney General's salary was 1,942, and they were given as follows: Amendment to the constitution: Yes, 626. Amendment to the constitution: No, 1,316.' Appended to this is a certificate certifying the statement of votes to be correct. On the opposite page also appears a tabulated statement of the votes cast in the townships and wards of the county. The particular infirmity alleged in the canvass is that the number of votes cast for and against the amendment is not written out in words at length, but numerals are employed instead. We think this is not such a

departure from the provision of the statute as would have justified the board of canvassers, or will now justify them, in excluding the returns of this county. The provisions relating to the canvass and return are usually held so far directory as that if, from the returns, the true facts can be ascertained, they will not be excluded in the canvass. As is stated in Paine on Elections (section 585): 'An election will not be invalidated by mere neglect or irregularity on the part of the officers making the return if the will of the voters can be ascertained with certainty.' See, also, *State vs. Bailey*, 7 Iowa, 390; *Opinion of Justices*, 70 Me., 560; and *Easton vs. Scott*, 1 Cong. Elect. Cas., 273, in which last case this precise question is ruled. It should be stated, however, that the provision of the statute relative to writing out the result of the canvass in words as well as figures is mandatory, in the sense that the neglect to do so renders the parties guilty of such neglect liable to the penalty provided by the statute. The people's remedy in such case lies in the punishment of the offenders, rather than in the disfranchisement of voters innocent of fraud.

Since this case was submitted, a motion has been made to amend the answer, based upon an affidavit of the former clerk of Gratiot county, I. N. Cowdry, which tends to show that the board of canvassers never completed and signed a proper canvass of the votes on the amendment, but that, after tabulating the returns and ascertaining the result, it was left with the clerk to make up the statement, and that he did so, attaching the name of the chairman. The clerk files a subsequent affidavit, stating that he never made oath to the first purported affidavit, and also stating that the vote on the Attorney General's salary was canvassed in the same manner as the vote on Justice of the Supreme Court and Regents of the University, except that the signature of the chairman of the board was not attached to the return made to the Governor, Secretary of State, and State Treasurer. There is nothing to impeach the substantial correctness of the canvass as made, and, if the second affidavit of Mr. Cowdry be accepted, there was no irregularity which would not have been cured by the performance of a duty imposed by statute upon the State Board of Canvassers; for, while it does appear that the return to the State officials was not signed by the chairman, it does not appear but that the county canvass, which is a distinct thing, was. But a less technical answer is that if this irregularity had, at the time, been called to the attention of the court, any imperfections in the canvass could have been directed to be corrected by *mandamus*; and it is not too much to assume that the State officials, having imposed upon them the duty of recording the will of the voters of the State, would, if necessary, have resorted to this course. After the lapse of this length of time, when the remedy is possibly lost to the State, we will not permit the record to be impeached except by showing that there has been an actual substantial error, working prejudice, which fact does not appear here. On the contrary, it appears that the record shows substantially the correct state of the vote. If any clerical error exists, it is not sufficient to in any way affect the result. Inasmuch as the error, if any, consists simply in a want of due authentication, we adopt the course pursued in *People vs. Nordheim*, *supra*, and treat the record as sufficient, without going through the form of reconvening the board. Whether the State is entitled to recover any portion of the salary paid during the period since the determination made by the Board of Canvassers, in 1891, if the services were rendered in good faith, and in the belief that the amendment had in fact received the requisite vote, we do not deter-

mine, as the question is an important one, and has not been discussed. The writ of *mandamus* will issue."

Reported in 59 N. W. Rep. 181.

Auditor General vs. Calhoun Circuit Judge. *Certiorari*. Affirmed.

This was a proceeding by *certiorari* to review the action and decision of the circuit court in allowing the account of L. M. Gillett, one of the coroners of Calhoun county, against the State, for services, under section 9593 Howell's Statutes, for holding an inquest upon the dead body of a stranger. This section provides that when the inquisition is upon the dead body of a stranger, not belonging to this State, the fees of the coroner, and all the expenses of the inquisition, shall be paid by the State, "the account of such expenses and fees being first allowed by the circuit court for the county." It appeared that on October 20, 1893, a most disastrous wreck occurred on the Chicago & Grand Trunk Railway at Battle Creek. Many persons were killed and many more injured. Among those killed was one Mrs. C. W. VanDusen, of Sprout Brook, N. Y. An inquest was held upon her body for the purpose of ascertaining the cause of death, and to place the blame, if any there was, upon the proper parties. A bill for this inquest was presented to the circuit court, as provided by this statute, and allowed. After its allowance, it was forwarded, with proper certificate to the Auditor General, for his warrant. After examining the account, the Auditor General was not satisfied with many of the charges, or the action of the court thereon. He sued out a writ of *certiorari* from the Supreme Court, claiming (1) that the court below did not acquire any jurisdiction to pass upon the account, for the reason that no notice was given to anyone authorized to appear for the State, and that a notice to the prosecuting attorney of the county was not sufficient, as his interests were antagonistic to the State; (2) that certain items enumerated in the affidavit for the writ were no part of the expense of the inquisition, and the court below had no power to allow them; (3) that certain items were greatly in excess of the amount authorized by the statute; (4) that a great majority of the witnesses charged for were not subpoenaed for the purposes of the inquisition, but were present merely for the purpose of identification of persons other than Mrs. VanDusen; (5) that the stenographer's fees charged for were not authorized by the statute, and, if one was employed, he should be paid by the county, and not by the State; (6) that certain fees for serving subpoenas were duplicated, service being claimed by the sheriff and by the coroner, and that the item for express in shipping the body of a Mrs. Aldrich home, when she was a resident of this State, was unauthorized.

The statute under which this inquest was held is chapter 336, Howell's Statutes. It is provided in that chapter that justices of the peace shall take inquests upon the view of the dead bodies of such persons as shall have come to their death suddenly, or by violence. The justice is authorized to summon a jury to inquire, in behalf of the people of this State, when and in what manner, and by what means, the person came to his death, and to make a true inquest thereof. The justice may issue subpoenas, and enforce the attendance of witnesses. He may subpoena a competent physician or surgeon for the purpose of a post mortem examination, and to testify to the result of such post mortem examination; and, in

all cases where murder or manslaughter is supposed to have been committed, the testimony of all witnesses examined shall be reduced to writing, signed by the justice, and subscribed by the witnesses. The jury, upon inspection of the body, and after hearing the witnesses, and making all needful inquiry, are to draw up and deliver to the justice, their inquisition, in which they shall find and certify when and in what manner the deceased came to his death; and, if it appears that he came to his death by unlawful means, the jurors shall forthwith state who was guilty, either as principal or accessory, or was in any manner the cause of his death, if known. If the jury find that a murder, manslaughter, or assault has been committed upon the deceased, the justice shall bind over such witnesses as he thinks necessary to appear and testify at the next court to be held in the same county, and return into court the inquisition, written evidence, recognizances, and examinations by him taken, and may commit to jail any witness who shall refuse to recognize in such manner as he shall direct. The justice may also issue a warrant for the apprehension of the accused person. By the last section of the act, it is provided that on being called to view the dead body of a stranger, if he shall not think it necessary that an inquest be taken, he shall cause the body to be decently buried. The next succeeding sections (being sections 9594 and 9595, Howell's Statutes) provide that all provisions of law relating to holding inquests by justices of the peace are made applicable to inquests held and to be held by coroners, and all powers by general law of the State conferred upon justices of the peace, relative to such inquests, are conferred upon coroners of the several counties. Acting under these provisions of the statute, the coroner, Mr. Gillett, proceeded to hold the inquest. By the return of the circuit judge, it appeared that he fully and thoroughly investigated the account, and learned the particulars in relation to the items of account, before certifying the same. From his return, it also appeared that the court below not only carefully examined the testimony taken at the inquest, but on the trial before him of Mr. Scott, for manslaughter, growing out of the wreck, many of the facts were then shown. The court also visited the scene of the wreck, and learned many of the facts about the matters from which the account was made up. On the hearing of the account the prosecuting attorney of the county appeared for the State, and, as the court understood it, to protect the interests of the State. From the wreck, twenty-four bodies were taken,—some nearly consumed, and all burned beyond recognition. The court below said of this that the work of identification by the coroner and his assistants, by the fragmentary articles of clothing, ornaments, etc., must have been an undertaking that would have disheartened most people; that in connection with all this, all of these were strangers,—and with the numerous telegrams from, and personal inquiries of, friends and relatives, the classification and numbering of bodies, and the effects found on or near each, convinced him of the correctness of the account. All the dead, with one exception, were strangers, and non-residents of the State. In relation to the charge of the stenographer, the court certified that one was employed at the request of the prosecuting attorney, and his services were necessary to assist the officers in getting at the facts and circumstances. It was denied by the court that witnesses were subpoenaed to identify other bodies, or for any other purpose than the legitimate purposes of the inquisition; and he denied that any charges were duplicated, or in excess of the allowance permitted by statute.

Section 551, Howell's Statutes, provides that "the prosecuting attorneys shall, in their respective counties, appear for the State or county and prosecute or defend in all the courts of the county all prosecutions, suits, applications and motions, whether civil or criminal in which the State or county may be a party or interested." The statute authorizing the circuit court to allow the account does not in terms provide for notice of the application for the allowance of such accounts to any one authorized to appear for the State, but in this case the notice was given to the prosecuting attorney, and he did appear.

*Held.* 1. That the allowance of such expenses by the court would not be disturbed, unless some illegal claim was allowed.

2. Where a stenographer takes the testimony at the request of the prosecuting attorney, and his services were necessary to assist the officers, his fees should be allowed.

3. The statute making no provision for serving notice of an application to the court, to allow such expenses, on any officer of the State, service on the prosecuting attorney, who appeared for the State, was sufficient.

Reported in 59 N. W. Rep., 398.

James W. Flynn vs. Auditor General. *Mandamus.* Denied.

By act No. 188 of the Laws of 1891 the sum of \$100,000 was appropriated for the purpose of making an exhibit of the manufactures and products of the State of Michigan at the World's Columbian Exposition, which sum was increased by an additional appropriation of \$25,000, by act No. 50 of the Laws of 1893. The former act, in accordance with which these funds were to be expended, provided for a board of World's Fair managers, which board was authorized under certain restrictions, to draw the money from the State Treasurer, upon the warrant of the Auditor General; and it was provided "that in no event or account shall the State of Michigan nor the said board created by this act, be held responsible, or be made liable for any sum in excess of the amount appropriated by this act," etc. The act authorized the board to expend from said fund an amount sufficient to erect an adequate "State administration building" upon the exposition grounds, which was done. Upon the close of the fair, the board found that, of the fund of \$125,000, about \$1,000 remained in its hands unexpended, and that there were outstanding bills to the amount of about \$1,600, which, together with some expenses in the preparation of an "historical report of Michigan at the World's Fair," it was their expectation to pay from the amount on hand, viz, \$1,000, of the original fund appropriated, and any moneys that should be realized from a sale of the building aforesaid and its furniture, which they contemplated making. Upon the sale of the building and other property belonging to the State, the board received about \$3,600, of which sum \$100 was paid into the State treasury. The Auditor General having refused to draw a warrant for said sum of \$100, an application for *mandamus* to compel him was made by the board.

The act authorized the Auditor General to issue warrants to the extent of the fund appropriated, viz. \$125,000, but contained no authority to exceed that sum. Section 8 permitted the sale of the buildings and property of the State by the board, but required that the money received therefor should be deposited with the State Treasurer, while section 7 expressly provided that the State would not be liable beyond \$125,000.

*Held*, That none of the expense of preparing an "historical report" of the State at the exposition could be paid from the amount received on the sale of the building.

The answer of the Auditor General asked a *mandamus* requiring the board to pay to the State Treasurer the balance in its hands received from the sale of State property. *Held*, That as section 8 allowed six months after the close of the fair within which the board might settle its accounts with the Treasurer, the writ was not necessary.

Reported 57 N. W. Rep., 1092.

People *ex rel.* Attorney General vs. Judge of the Superior Court of Grand Rapids. *Mandamus.* Granted.

James Wilson and Arthur Fagan were held for trial in the superior court of Grand Rapids on the charge of assault with intent to rob. Upon the impanelling of the jury the defendant challenged the array for the following reasons:

1. That the correct number of jurors were not drawn for each ward in the city of Grand Rapids.

2. That the same list of jurors, with a few exceptions, were returned to the circuit court for Kent county.

3. That no list from the eighth ward was filed with the city clerk.

4. That the list filed with the city clerk from the eleventh ward was not the same as the one filed with the clerk of the superior court.

The prosecuting attorney demurred, but the judge sustained the challenge, and this was a proceeding to compel the judge to set aside his order sustaining the challenge.

The Supreme Court granted the writ, thus in effect overruling the challenge. No opinion was filed.

*Mandamus* and other proceedings pending:

State of Michigan vs. Hulbert H. Warner *et al.*

In the matter of William E. Jacobs.

Auditor General vs. Board of Supervisors of Bay County.

State vs. City National Bank of Lansing.

State vs. Roscoe D. Dix *et al.*

John Hurst vs. Frank R. Warner.

## SCHEDULE C.

---

This schedule contains a list of *quo warranto* proceedings, commenced either by the Attorney General upon his own relation, or by the Attorney General upon the relation of some other person.

Attorney General *ex rel.* Henry M. Reynolds *vs.* William May. *Quo Warranto*. Respondent demurred to relator's replications. Demurrer overruled, and respondent allowed five days in which to file and serve rejoinder.

The information in this case was filed to test the title to the office of the clerk of Wayne county, and was in the usual form. The plea was also in the usual form, and alleged that at the election held on the 8th day of November, 1892, the respondent received the greatest number of votes, and was duly elected to the office. Eight replications were filed, which were demurred to.

The first and second replications of relator respectively gave notice to respondent that fifty-four votes and twenty votes were void, and should not have been counted, and that with such votes thrown out, relator had a majority of the votes cast. *Held*, not demurrable on the ground that it did not appear that the alleged illegal votes had any effect on the result of the election.

The third replication tendered an issue as to whether the ballot boxes were tampered with, votes for relator destroyed, and others for respondent substituted, after the canvass and return of the votes by the board of inspectors of election. *Held*, not demurrable because relator set forth certain evidence on which he relied.

The fourth replication presented an issue whether certain ballots were illegal, because cast by unregistered persons. *Held*, not demurrable, in that the verification simply stated that the Attorney General was ready to verify by the registry of qualified voters, and the poll list of persons who voted, since the registry and poll lists are public records sufficient to establish a *prima facie* case for relator, and the Attorney General would be entitled to make proof of them.

The sixth replication alleged that seven hundred and fifty ballots were exhibited, contrary to law, in a certain precinct; that the election in such precinct was therefore void; and that relator was elected, with such ballots thrown out. *Held*, not demurrable, in that it tendered an immaterial issue on an item of evidence, and did not aver that the election in the precinct was so invalid as to disfranchise all the electors therein.

The replications admitted that the returns of the inspectors and the

report of the county canvassers were correct, except as to precincts and ballots which relator specified, and charged to be void. *Held*, that they did not seek to avoid the real issue, as to who received the greater number of votes, but were proper pleadings, in that they sought to narrow the issues.

It was contended by the relator that, if the demurrers were overruled, judgment of ouster should be entered. *Held*, that time to plead would be granted on overruling a demurrer to a replication in *quo warranto* proceedings, where the demurrer was interposed in good faith, and without intent to delay.

Reported in 96 Mich., 568; 56 N. W. Rep., 1035.

Attorney General *ex rel.* Henry M. Reynolds vs. Wm. May. *Quo warranto*. Judgment of Ouster.

This was an information in the nature of *quo warranto* to determine the question whether the relator or the respondent received the greater number of legal votes cast in the county of Wayne at the general election held November 8, 1892, for the office of county clerk. The original election returns, as certified by the inspectors of election and returned to the office of the county clerk, showed that the relator received 26,821 votes, and the respondent 26,799, or a majority for the relator of 22 votes. A recount was had under act No. 208 of the Public Acts of 1887 (3 How. St. § 234a), by which it was shown that the respondent received 26,847 votes, and the relator 26,729, or a majority for the respondent of 118 votes; and the board of county canvassers were directed to issue the certificate to the respondent. *May vs. Board*, 94 Mich., 505, 54 N. W., 377. In the present proceeding eight replications were filed to respondent's plea. Respondent demurred to these replications. The cause was heard on these demurrers at the October term, 1893, and the demurrers overruled, with leave to the respondent to plead over. The decision of these questions is reported in *Attorney General vs. May*, 97 Mich., 570, *ante*, p. 95. Rejoinders were filed by respondent to these replications, denying the facts therein set forth, and putting himself upon the country. The cause was subsequently sent down to the Oakland circuit court for trial of these issues of fact. Forty-nine special questions were submitted to the jury for their findings, and, by their answer to question No. 46, they found that Henry M. Reynolds received the greatest number of votes cast for that office, and that he had a majority over May of 1,926 votes. The principal question was raised under the sixth replication, the substance of which is set out in *Attorney General vs. May*, *supra*. In that it was alleged that in the fourth precinct of the fifth ward of the city of Detroit, the chairman of the board of inspectors of election illegally and wrongfully received 750 ballots, and illegally and wrongfully deposited the same in the ballot box, said ballots having been marked and shown to persons who were not lawfully assisting the voters or any of them in the preparation of their ballots before said ballots had been deposited, and that the same were shown in such a manner as to disclose to the persons to whom they were shown some or all of the names of the candidates voted for upon said ballots; that said ballots were so deposited unmarked and unchallenged by the board of inspectors; that said votes went to make up the large majority of 553 votes in favor of respondent; that, by reason thereof, the election in said precinct was rendered wholly invalid, illegal, and of no effect upon the election for the

office of county clerk; and that, by reason thereof, the said relator was elected by a majority of 565 votes. The objection to this replication was that it tendered an immaterial issue, and that it was not averred that the election in said district was so invalid as to effect the disfranchisement of all the electors therein. Issue was joined upon this replication by the respondent, and it became one of the questions of fact to be found by the jury. By the answers to questions 13 and 14, the jury found that Henry M. Reynolds received in all the townships and voting districts of said county, not including the fourth district of the fifth ward of Detroit, 25,910 votes, and that William May received in such townships and wards, not including the fourth district of the fifth ward, 23,984. To question No. 46, the jury found that Mr. Reynolds received 1,926 majority over Mr. May. All of the votes in the fourth district of the fifth ward of Detroit were discarded by the jury.

The testimony on the part of the relator showed that the inspectors of election in that district were Alois Diemel, Edward Fierz, John Manquin, Bernard Zentowski, Peter Brinker and John Vandergyp; that no one was designated by the board to assist voters in the preparation of their ballots; that William F. Schneider and John Erhard were United States supervisors of election, and that Joseph Diemel and Peter Knauss were deputy United States marshals for that district; that the greater part of the voters were Poles, Germans and Italians, and that from six to seven hundred of these voters were assisted in marking their ballots because they could not read English; that none of the voters thus assisted were sworn as to their ability to read English; that the only persons who actually marked the ballots for such voters were Alois Diemel, John Vandergyp, Joseph Diemel, and Peter Knauss; that during the election the marking of ballots for voters in this district as above described was seen and observed by the United States officers of election and the deputy United States marshals above named. On the part of the respondent, it was shown by the testimony, and admitted, that this large number of voters were assisted in marking their ballots, and, as claimed, because they could not read English; and that none of them, thus assisted, had been sworn as to his inability to read English. It was not denied that these deputy United States marshals saw how these ballots were marked, but it was claimed that this method was adopted because it was believed that, on account of the large registration and the great number of voters needing assistance, the proper vote of the district could not be cast if the work of assisting voters were to be done only by Diemel and Vandergyp in company with each other. It was also shown that Diemel and Vandergyp were designated by the board to assist voters in marking their ballots.

It was contended by counsel for respondent that the court was in error in its direction to the jury that "if any voter was not first sworn as to his inability to read English, and allowed his ballot be marked for him, or allowed anyone to see his ballot when it was marked, he thereby lost his right to vote at that election, and that it was unlawful for any inspector of election to mark the ballot of any elector who had not been sworn as to his ability to read English." Upon this point it was contended that the statute under which this portion of the charge was given is not mandatory, but directory merely, and that the provisions requiring assisted voters to be first sworn, as construed by the court below, is unconstitutional, because it puts unreasonable restrictions upon the right to vote. Section 32, act No. 190, Public Acts 1891, provides: "When any elector shall make oath

that he cannot read English, or that because of physical disability he cannot mark his ballot, or when such disability shall be made manifest to said inspectors, his ballot shall be marked for him in the presence of at least two of the inspectors by an inspector designated by the board for that purpose, who is not a candidate on said ticket." By section 26 it is provided: "If any elector shall show his ballot, or any part thereof, to any person (other than one lawfully assisting him in the preparation thereof) after the same shall have been marked, so as to disclose any of the candidates voted for, such ballot shall not be received or deposited in the ballot box. In case such elector shall so expose his ballot, his name shall be entered on the poll list with a minute of such occurrence and such elector shall not be allowed to vote thereafter at such election." Section 45 of the act provides: "Any person who shall \* \* \* disclose to any other person the name of any candidate voted for by any elector, the contents of whose ballot shall have been seen by such person \* \* \* shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the State prison not exceeding two years, or by both such fine and imprisonment in the discretion of the court."

*Held*, that section 32 is mandatory, and that ballots marked by inspectors for electors who could not read English, but who did not make oath to their inability so to do, should not be counted, though no fraud was intended or perpetrated, and they were so marked by reason of a wrong interpretation of the law.

*Held further*, that such statute is not unconstitutional in that it puts unreasonable restrictions on the right to vote.

It was next contended that the court was in error in directing the jury: "It is unlawful for either United States marshals, challengers, or others except inspectors of election who are lawfully assisting him, to either mark the ballot for voters, or see them marked, before they are deposited in the ballot box, and all such votes are void; and it is contrary to law to deposit them in the ballot box or to count them in determining the result of the election." Section 32 provides the only authority by which an elector may have a ballot marked. It has been quoted above. The marking can be done only by an inspector designated by the board for that purpose, and in the presence of at least two of the inspectors.

*Held*, that under such act it is unlawful for United States marshals, challengers, or others, except inspectors of election who are lawfully assisting voters, to either mark ballots or see them marked before they are cast, unless United States supervisors of election may see them when a member of Congress is to be elected, under the authority of Rev. St. U. S. §§ 2017, 2019, 2021, 2022; and ballots exhibited to such marshals are void and should not be counted.

The jury found, by the thirteenth and fourteenth findings, that the relator received in all the voting precincts of the county, aside from the fourth district of the fifth ward of Detroit, 25,910 votes, and that the respondent received in the same districts 23,984 votes. The jury also found, by the forty-sixth finding, that the relator had a majority over the respondent in all the districts within the county of 1,926 votes. It was apparent that the jury, in arriving at this result, threw out the entire fourth district of the fifth ward. This was undoubtedly done under the testimony and the charge of the court, in which they were directed as follows: "If illegal votes were received, and the evidence does not show in whose favor the illegal votes

were cast, and they are as great in number as the majority received in that voting district, then the election in that district shall be thrown out and disregarded by you. If the evidence does not disclose for whom such illegal votes were cast, and they are less in number than the majority in that voting district, then they shall be taken from the total vote proportionately, according to the entire vote returned for each candidate in that precinct." It was contended that this was error. As to the fourth district of the fifth ward, the jury found that Alois Diemel and John Vandergyp were designated as inspectors, by the board of inspectors, to mark ballots for electors who made oath that they could not read English. They found that 565 electors were assisted in marking their ballots because they could not read English, and that not one of them made oath that he could not read English. The jury further found that in that district Alois Diemel marked 320 ballots not in the presence of any other inspector; that Joseph Diemel, deputy United States marshal, marked ten ballots, and saw 100 ballots marked by others, and that the contents thereof were disclosed to him; that Peter Knauss, deputy United States marshal marked ten ballots, and saw 100 ballots marked by others, and the contents thereof were disclosed to him, so that the jury found at least 540 illegal ballots cast at that poll, not counting those seen by the supervisors of election. In the fourth district of the fifth ward, the record shows that the relator received 298 votes, and the respondent 858 votes, or a majority for respondent of 560. It appeared, therefore, that the jury must have taken into account the ballots marked and seen marked by the United States supervisors of election to make the number of illegal votes equal to the majority received by the respondent; that is the twenty marked by Erhard and the 100 by the other supervisor, Mr. Schneider. If, however, the whole district should not have been excluded, and the illegal vote had been taken from the total vote, proportionately, according to the entire vote returned for each candidate in that district, it was apparent that the relator would still have had a majority of the whole vote of the county, as shown by the finding of the jury, that being that the relator had 1,926 majority.

*Held*, That instructions which authorized the jury to throw out the vote of an entire district, instead of apportioning illegal votes cast, are harmless, if erroneous, where the result would be the same if such illegal votes were apportioned.

The jury were directed that they should take the illegal votes from the total vote proportionately, according to the entire vote returned for each candidate in that district, the rule being based upon the proposition that the illegal votes had gone into the boxes without the fault of either candidate. *Held*, correct.

It was contended by the respondent that the court erred in ruling that the relator had the opening and closing in putting in the proofs and in the argument to the jury.

*Held*, That the burden was on relator to show his right to such office, and he was entitled to open and close the evidence and argument to the jury.

Reported in 58 N. W. Rep., 483.

Attorney General *ex rel.* Speed vs. John B. Corliss, *Quo Warranto*.  
Judgment of ouster.

The information in this case was filed to test the title of the respondent to the office of city counselor and head of the legal department of the city

of Detroit. The relator interposed a demurrer to the respondent's plea, and the case stood at issue upon the joinder in the demurrer.

It appeared that the relator was a resident and elector of the city of Detroit, and that on the 16th day of June, 1891, he was appointed city counselor by the common council of said city on the nomination of the mayor. That he took the oath of office, and filed his official bond, which was approved by the common council, and thereupon entered upon the duties of said office. That on the 1st day of June, 1893, the Legislature of this State passed an act entitled "An act supplemental to the charter of the city of Detroit, and to provide for a law department in said city," the second section of which provides: "The city counselor shall be a practicing attorney, appointed as provided in this act. He shall have practiced his profession for at least five years, and shall devote his whole time to the duties of his office. He shall be appointed by the mayor on or before the third Tuesday in June for the term of three years from the 1st day of July next succeeding his appointment." That this act was approved by the Governor on the day of its passage, and took immediate effect. That at this time the relator was in the office of city counselor for the term ending July 1, 1893. That on July 15, 1893, the mayor of the city executed and delivered to the relator an appointment to the office of city counselor, as follows: "Office of Mayor of Detroit, Mich., July 15, 1893. In pursuance of an act entitled 'An act supplemental to the charter of the city of Detroit, and to provide for a law department in said city,' approved June 1, 1893, I have appointed and hereby appoint John J. Speed city counselor of the city of Detroit for the term of three years, commencing on the first day of July, 1893. H. S. Pingree, Mayor of the city of Detroit." That relator filed this appointment in the office of the city clerk on the same day it was made, together with his oath of office. That the act under which the appointment was made provides in section 3 that the city counselor shall, before entering upon the duties of his office, execute a bond to the city of Detroit in the sum of \$5,000, with such sureties as the common council shall approve, conditioned for the faithful performance of the duties of his office. That on July 18, the relator executed the bond required by the act, with two sureties in the penal sum of \$5,000. That the bond was endorsed by the city attorney, in which he certified that it was correct in form and execution. That this bond was filed on the day of its execution in the office of the city clerk, and by him transmitted to the common council, who referred the same to the committee on ways and means, and that this committee, on July 25, 1893, reported to the common council in favor of the approval of the bond, which report was laid upon the table. That on July 18, 1893, the mayor communicated to the council that in pursuance of the act of June 1, 1893, he had appointed the relator as city counselor for the term commencing July 1, 1893. That at a meeting of the council held July 25, it received from the mayor the following communication: "To the Honorable, the Common Council—Gentlemen: In compliance with the act supplemental to the charter of the city of Detroit, providing for a law department, passed by the Legislature in 1893, and approved June 1, 1893, I notified your honorable body last Tuesday of the appointment of John J. Speed as city counselor of the city of Detroit under said act. Since said appointment said Speed has by public utterance placed the matters of the greatest importance to the city, now in litigation, in jeopardy, by, it seems to me, most unwise and uncalled for interviews in the public press. His attitude as thus fairly conveyed seems hostile to

the best interests of the community. While admitting the ultimate success of the present litigation, he questions the policy of the city, the motives of the officials, and advocates the interests of the defendants. In order to protect the people and maintain their rights thus far obtained in the courts, I have this day revoked the appointment of said John J. Speed as city counselor, and hereby give you notice thereof, and request your honorable body not to accept any bonds from said Speed, as required by the act aforesaid for such office, as the same is now vacant. Very respectfully, H. S. Pingree, Mayor." That the report of the committee for the approval of the relator's bond was thereupon laid upon the table; and that on July 29, at a special session of the council, the mayor, by a communication then made, informed the council that he had appointed John B. Corliss city counselor, and requested confirmation thereof, and on motion this appointment was confirmed by the council.

That respondent had taken his oath of office and filed his bond, as required in the act, and on August 4, demanded from the relator the documents, papers, and cases in his hands belonging to the said city, which the relator refused to deliver, claiming that he was entitled to retain the same. That upon this action being reported to the common council, they passed the following resolution: "Whereas, the common council, on the 29th of July, 1893, on the nomination of the mayor, confirmed the appointment of John B. Corliss to the office of city counselor; and whereas, said John J. Speed has refused to surrender the papers, documents, and legal cases in his possession to the legal officers of the city, claiming by some legal technicality a right to continue to hold said office: Therefore, resolved, that while not conceding the right of John J. Speed to said office, but in order to prevent any further claim thereto, that this common council, by the authority of the powers granted by the charter of the city of Detroit, do hereby, for reasons deemed sufficient and ample, remove said John J. Speed from the office of city counselor that he claims to hold, and hereby discharge him from all rights and duties thereof."

*Held*, that the act providing that the city counselor shall be appointed by the mayor for the term of three years, repeals the provision of the charter that the city counselor shall be appointed by the common council on the nomination of the mayor, and vests the exclusive power of appointment in the mayor.

*Held further*, that the mayor having duly made and filed the appointment of a city counselor, such appointment was beyond his power of recall.

*Held further*, that the provision of the city charter that any officer holding by appointment, "unless otherwise provided," may be removed by the city council without charges, does not apply to a city counselor, it being inconsistent with the provision of the act that he shall be appointed by the mayor for a term of three years.

Reported in 98 Mich., 372; 57 N. W. Rep., 410.

Attorney General vs. The Detroit & Saline Plank Road Company. Application for leave to file information. Denied.

The Attorney General petitioned for leave to file an information in the nature of a *quo warranto* for the purpose of ascertaining by what authority

respondent claimed the right to maintain its road and collect tolls thereon. The petition was based upon the act of the Legislature of 1893 known as "Local Act No. 422," entitled "An act to repeal an act entitled 'An act to incorporate the Detroit and Saline Plank Road Company,' approved March 23, 1848, and to provide for the winding up of the affairs of said company." The first section of said act No. 422 was the repealing section, and the second section provided that proceedings might be had for winding up the affairs of said corporation in the circuit court, as in cases of forfeiture. It appeared by the House journal that on February 5, 1893, within the first fifty days of the session, a bill was introduced in the House, entitled "A bill to authorize the cities and townships of the State to acquire by purchase or condemnation all the right of toll or plank road companies in the streets or highways of such cities or townships, and to authorize such toll or plank road companies to sell such portions of their roads within such cities or townships in which the same may be located." The bill was entered as "House Bill No. 247," was read a first and second time by its title, and referred to the committee on judiciary. That on May 10, the committee on judiciary was discharged from the further consideration of the bill. That on May 17, the committee on judiciary, pursuant to directions, reported the bill to the House. That on May 18, the bill was referred to the committee of the whole, placed on the general order, and ordered printed. That on May 19, the committee of the whole reported that they had made sundry amendments to the bill and recommended its passage. The House concurred in the amendments, and placed the bill on the order of third reading. That on May 23, the bill was taken from the table, read a third time, and placed upon its passage, but, failing of the necessary two-thirds vote, was not passed. The vote was then reconsidered, and the bill laid upon the table. That on May 24, the bill was taken from the table and passed. On each occasion the bill was expressly referred to in the journal as "House Bill No. 247, entitled 'A bill to authorize the cities and townships of the State to acquire by purchase or condemnation all the right of toll or plank road companies in the streets or highways of such cities or townships, and to authorize such toll or plank road companies to sell such portions of their roads within such cities or townships in which the same may be located.'" The title to the act nowhere appeared in the journal until after the final vote upon the passage of the bill, when the title was amended so as to read as follows: "A bill to repeal an act entitled 'An act to incorporate the Detroit and Saline Plank Road Company,' approved March 23, 1848, and to provide for winding up the affairs of said company." The last of the fifty days was February 22.

*Held*, not an amendment, but a new bill, which, having been introduced after the first fifty days of the session, in violation of the constitution, article 4, section 28, was of no effect.

Reported in 97 Mich., 589; 56 N. W. Rep., 943.

Attorney General *ex rel.* Otis Fuller vs. Eugene Parsell. *Quo warranto*. Motion to strike rejoinder from the files. Granted in part and cause set for hearing on the remaining rejoinders treated as demurrers.

The Attorney General filed an information in the nature of *quo warranto* against the respondent. The information alleged, substantially, that the

respondent had usurped, intruded into, and unlawfully held the office of warden of the State House of Correction and Reformatory at Ionia, and had so unlawfully held the same for a long time, to wit, for ninety days last past, and still continued so unlawfully to hold and exercise the same. The information also alleged that Otis Fuller, the relator, was lawfully entitled to said office, having been appointed to the same on September 27, 1893, and on the same day took the oath of office, and filed it with the Auditor General, and that on the 7th day of November, 1893, he filed his approved bond with the Auditor General. The respondent filed a plea in which he set up that he lawfully held said office by reason of his appointment thereto by the board of control thereof on the 7th day of October, 1891, for the period of four years therefrom, and that he had during all of said time, and then had, the executive ability essential to the proper management of the officers and employes under his jurisdiction, and to maintain proper discipline in every department, and that up to the time of filing the information he had continued faithfully to perform the duties of said office. A replication was filed by the relator to this plea, in which it was denied that the respondent had the executive ability essential to the proper management of the officers and employes of said State House of Correction and Reformatory at Ionia, and to maintain proper discipline in every department, and denied that the respondent, after he assumed the office, faithfully performed the duties thereof, as in said plea mentioned; and to this end the Attorney General said that the respondent was removed therefrom by the board of control on September 27, 1893, for the reason that the respondent did not have the executive ability essential to the proper management of the officers and employes of said reformatory, and did not maintain proper discipline in every department thereof, and did not faithfully perform the duties of said office. These facts were set up at great length in the replication, admitting the appointment of the respondent to the office by the board of control, the appointment by the Governor of a new board of control, the charges and specifications of charges made by the board against the respondent, and their action thereon, and their order of removal of the respondent from the office. Six rejoinders were filed to this replication. By the first one the respondent alleged what he had before alleged in his plea, that he did have the executive ability essential to the proper management of the officers and employes of said reformatory and to maintain proper discipline in every department thereof, and that he did faithfully perform the duties of said office of warden as in said plea alleged; and of this he put himself upon the country, and prayed judgment. In his second rejoinder he alleged, substantially, that after the passage of act No. 118 of the Public Acts of 1893 the Governor, by virtue of said act, assumed to appoint the board of control, requiring of each member thereof the political test named and mentioned in section 2, and by reason thereof appointed two Republicans and one Democrat, the said Governor himself being *ex officio* member of said board, and also being a Republican, and that the said Governor would not have appointed the Democratic member of said board, had he been a Republican, or the Republican members had they been Democrats, but that he made said appointment of these parties upon said board because of their political belief and for political reasons; and as to this the respondent put himself upon the country. In the third rejoinder he denied that proceedings were legally had and taken by said board by which an investigation was ordered by adoption of the resolution set forth

in relator's replication, and denied that said board was ever legally organized, or that notices of said hearing were duly served upon each member of said board of control, or that any findings or order of removal were duly given respondent, and also denied that on the 27th day of September, 1893, or at any other time, the said alleged board of control did then and there remove him from his said office, and denied that he was not entitled to the rights, privileges, and emoluments belonging to said office since September 27, 1893; and as to this he put himself upon the country. In the fourth rejoinder he alleged that the Governor and the two Republican members of the board, together with the relator and other evil-disposed persons, whose names were as yet to him unknown, prior to the said 27th day of September, 1893, to wit, upon the 13th day of July, 1893, the 7th day of August, 1893, the 1st day of September, 1893, the 11th day of September, 1893, the 21st day of September 1893, and divers other days and times between the said 13th day of July and the said 27th day of September, 1893, did wickedly, maliciously, devising and intending to bring contempt, discredit, and dishonor on the administration of a public office, to wit, warden of said State House of Correction and Reformatory at Ionia, then legally and lawfully held by this respondent, and to deprive him of then and there holding the office, and exercising the duties and receiving the benefits and emoluments thereof, and to deprive him of his good name, fame, and reputation, as well as to unjustly subject him to pains and penalties, conspire, combine, confederate, and agree together to vilify and defame this respondent, and did falsely and maliciously charge and accuse him of having been guilty of certain great corruption, neglect, official misconduct, and lack of ability in said office, and with having at divers times in his said office, and in the exercise of said duties, unlawfully and wantonly not practiced rigid economy in all matters pertaining to said prison, as provided by section 44, act No. 118 of the Public Acts of 1893, and with not having the executive ability essential to the proper management of the officers and employés under his jurisdiction, and to enforce proper discipline in the prison, as provided by section 5 of said act, and with having paid out moneys not permitted or allowed by law, and having employed persons without legal right so to do, and with not being in constant attendance at said prison, as required by section 7 of said act, to the great damage, disgrace, and infamy of the respondent, and to the great discredit and dishonor of the administration of said office; and the respondent alleged that the sole object of said combination, confederation, unlawful and fraudulent agreements, was for the purpose of ousting him from his said office of warden, without cause and without evidence, and installing therein, for political purposes, and the private and personal interests of said John T. Rich, (Governor), James T. Hurst, and Louis Kanitz (the Republican members of said board); and as to this he put himself upon the country. By the fifth rejoinder the respondent alleged his innocence of the charges brought against him by the board, and denied all the charges and specifications therein contained, and again alleged that his removal was brought about by the conspiracy between the Governor and the Republican members of the board, for political purposes, and to bring discredit upon him in the administration of the affairs of said office; and as to this he put himself upon the country. The sixth rejoinder alleged that, in pursuance of said conspiracy, charges were preferred, and the order of removal made by the board, the parties thereto still knowing and understanding that the removal was not because of any

act of the respondent in the discharge of his duties as warden, nor because of any dereliction of duty, nor because he was guilty of any of the charges so made, but for political purposes only; and as to this he put himself upon the country. The sixth rejoinder also set out that he was removed by the said board maliciously and arbitrarily, and for political purposes, and that the Republican members of the board conspired together to defame and to bring him into disgrace and infamy.

The six rejoinders were filed in the cause, and the relator moved to strike them from the files for the reasons: (a) That the first rejoinder was but a repetition of the allegation in respondent's plea, which was duly answered by the relator's replication. (b) That the issue tendered by the second rejoinder was determined against the respondent by the court in *Fuller v. Ellis*, and, if the respondent desired to further question the constitutionality of the act under which the board was appointed, he should have demurred to relator's replication. (c) That the issue tendered by the third rejoinder was determined against the respondent in *Fuller v. Ellis*. (d) That the fourth and sixth rejoinders contained scandalous and impertinent matter, and did not tender any material issues. (e) That the fifth rejoinder contained scandalous and impertinent matter, and the issues tendered were determined against the respondent in *Fuller v. Ellis*.

The respondent contended upon several grounds, that the motion to strike out the rejoinders could not be sustained. He contended that the relator did not conclude his replication to the country, and, that being so, two ways were open for the respondent to meet the matter,—that he might add a similiter, or take a traverse after a traverse concluding to the country. The plea set out the respondent's claim of title to the office, his appointment by the old board of control, his executive ability to discharge the duties thereof, and his faithful discharge of such duties. But one replication was filed, which was an admission of the appointment of the respondent to the office by the old board, his removal, and the appointment of the relator by the new board. This replication set out in full the various charges and specifications for the removal of the respondent, the appearance of the respondent before the board, and the contest there made, and the order of removal made by the board, and concluded with a verification.

*Held*, that the first rejoinder set up no new matter, and was but a reiteration of the allegations contained in the plea.

The issue made by the second rejoinder was one purely of law, and raised the constitutionality of act No. 118, Public Acts 1893. It was contended that because the Governor, in making the appointments on a new board, acting under section 2 of the act, appointed from each political party, such appointments were void. That section provides that the board shall consist of three members, to be appointed by the Governor, and not more than two of such members so appointed shall be of the same political party. The Governor, by the same section, is made *ex officio* member of the board.

*Held*, that the board's official acts could not be attacked on the ground that the members were appointed for political purposes, and because of their political beliefs, since they were at least *de facto* officers.

It was contended by counsel for respondent that four questions of fact were raised by the third rejoinder; (a) Whether notice was ever served upon the members of the board as required by law; (b) whether an order was ever passed as set forth in the replication for removal of respondent;

(c) whether any findings or order of removal were duly given to the respondent; (d) whether on the 27th of September, 1893, the respondent was removed from the office of warden by the board of control.

The foundation of the relator's action was the action of the board in removing the respondent, and appointing the relator to the office in question. It was therefore contended by the respondent that the board being an inferior body, clothed only with certain powers, when its judgment was relied upon, even in a collateral proceeding, the facts necessary to give the board jurisdiction must be both pleaded and proved.

Respondent admitted that, when the board resolved on his investigation, all the members and respondent were present; that he was present by counsel when they held the investigation, and ordered his removal; but denied that any findings or order of removal were duly served on him. *Held*, that his presence by counsel was sufficient notice to him, if any were needed as precedent to *quo warranto* against him.

Respondent's fourth, fifth and sixth rejoinders, which were allegations of malicious conspiracy on the part of the Governor and members of the board of control to defame and oust him, for no fault of his, but merely for political purposes, were held impertinent and scandalous, and were ordered stricken from the files.

Reported in 58 N. W. Rep., 335.

Attorney General *ex rel.* Otis Fuller vs. Eugene Parsell. *Quo Warranto*.  
Judgment of ouster.

Two opinions had already been rendered in this case. Fuller vs. Ellis, Attorney General vs. Parsell, *ante*. In the first of these cases, various questions were raised, and the constitutionality of the law was attacked.

After the last opinion was filed, the respondent, without leave of the court, filed an additional demurrer, and then challenged the validity of the act upon other grounds.

The first objection raised was that the act (act 118, Laws of 1893), as passed by the Legislature, was not the act as signed by the Governor. It was conceded that the body of the act, as passed and as signed, was identical in every respect, and that but one bill upon the subject was introduced, which was known as "Senate Bill No. 26," and "File No. 209." The question was raised upon the title to the act. The title, as introduced into the Senate, read as follows: "An act to revise and consolidate the laws relative to the State's Prison, to the State House of Correction and branch of the State's Prison in the Upper Peninsula, and to the House of Correction and Reformatory at Ionia, and the government and discipline thereof, and to repeal all acts inconsistent therewith." Under this title the bill passed the Senate. Pending the question, on agreeing to the title, the bill was laid on the table. The Senate journal showed that: "Mr. Sabin moved to take from the table Senate bill No. 26 (file No. 209), entitled 'A bill to revise and consolidate the laws relative to the State Prison, to the State House of Correction and branch of the State Prison in the Upper Peninsula, and to the House of Correction and Reformatory at Ionia, and the government and discipline thereof, and to repeal act 213, Laws of 1875; also act 238, Laws of 1887; also act 140, Laws of 1891, approved June 17, 1891, and all laws inconsistent therewith,' which motion prevailed. The question being on agreeing to the title of the bill, the title was agreed to." For con-

venience they will be referred to as the "short" and "long" title. The House journal showed that the bill was sent from the Senate under the short title, above given, and was referred to the three committees on the penal institutions of the State. These committees reported the bill back to the House by the short title, and recommended its passage. The next record that appeared in the journal was that "Mr. Sumner moved to take from the table Senate bill No. 26 (file No. 209)," giving the long title. The bill was then passed. It was returned from the House to the Senate under the short title, was engrossed and enrolled under that title, was presented to the Governor under that title and approved. The acts referred to in the long title were those relating to the various institutions mentioned in the short title. How the long title came to be used by the members in making the motions referred to did not appear.

It was clear that there was but one bill before the Legislature, and that the same act was duly passed and approved by the Governor. There was no record of any amendment. *Held*, that a law cannot be defeated by the fact that some member, in calling up the bill, and referring to it by its right number, failed to state the title correctly.

The next argument against the validity of the law was that it was in violation of section 25, article 4, of the constitution, which provides that "no law shall be revised, altered or amended by reference to its title only, but the act revised and the section or sections of the act altered or amended shall be re-enacted and published at length." The precise contention, as stated by counsel for the respondent, was that the acts or parts of acts revised and consolidated were not re-enacted and published at length. *Held*, that when the Legislature revises and consolidates certain acts, and covers the entire subject, the act, as revised and consolidated, supersedes and repeals all other acts in relation thereto; that the terms "revise" and "consolidate" imply the intention to include in such act entire control over the subject, and to exclude all prior enactments.

It was further argued that the language in the repealing clause, that "the acts and parts of acts contravening any of the provisions of this act are hereby repealed," indicated an intention to retain those provisions of the old law which might be held not to conflict with the new. The repealing section closed with these words: "But all proceedings pending and all rights and liabilities existing, acquired or incurred at the time this act takes effect, are hereby saved, and such proceedings may be consummated under and according to the law in force at the time such proceedings were commenced."

*Held*, that the repealing clause showed the understanding of the Legislature to be that the revised and consolidated act should repeal all other acts on the subject.

Counsel, both in their briefs and oral arguments, argued that the purpose of this law was political, and that it was intended to retain certain provisions of the old law. *Held*, that with the reason entertained by the Legislature for the enactment of a law, courts have no concern, unless such reason appears upon the face of the law itself, or upon the legislative journals; and not then, unless the purpose be one prohibited by the constitution.

Reported in 58 N. W. Rep., 839.

Attorney General vs. John W. Jochim. *Quo warranto*. Judgment of Ouster.

By constitution, article 8, section 4, and by statute (Howell's Statutes, section 202), the Board of State Canvassers is made to consist of the Secretary of State, State Treasurer, and Commissioner of the State Land Office. It is the duty of this board to canvass the returns from the various counties of the State, and declare the result of election for State officers, and upon constitutional amendments. At the spring election in the year 1893, four amendments to the constitution were voted upon by the electors of the State, one of which provided for an increase of the salaries of several of the State officers, including the three mentioned. These amendments were, by the Board of Canvassers, declared carried. Subsequently, the returns were recanvassed by the board, in obedience to a writ of *mandamus* issued by this court, when it was found and declared that the amendment relating to salaries was defeated. Proceedings were then taken by the Governor, which culminated in an order removing each of said officers from office, and declaring the same vacant; and, respondents refusing to surrender their respective offices, informations in the nature of *quo warranto* were filed in the name of the Attorney General, upon relation of the Governor, to try their right to such offices. This was the proceeding against the Secretary of State.

The questions in the case were raised by the replication and the demurrer of respondent thereto. In answer to the plea which asserted respondent's election and accession to the office of Secretary of State, the replication set up in detail the facts upon which the relator's claim was based, viz.: That relator was the duly elected and acting Governor of this State; that, as such, it became and was his duty, under section 8 of article 12 of the constitution, to inquire into the condition and administration of the office of Secretary of State, and the manner in which respondent performed the duties of such office, for the purpose of determining whether said respondent had been guilty of gross neglect of duty in relation to his duties as a member of the Board of State Canvassers, and to remove respondent from said office for gross neglect of duty, if he should be found guilty thereof; that, a charge of that kind having come to the knowledge of the relator, he caused written notice to be served upon the respondent, which notice required him to appear before the relator, and show cause why he should not be removed from his office of Secretary of State, for gross neglect of duty, in connection with the canvass of the returns in relation to said amendment relating to salaries of State officers, such notice containing three specific charges of neglect. The replication further alleged that the respondent appeared by counsel before relator, and moved to vacate the notice and dismiss the charges, for reasons mentioned therein; that the motion was denied; that evidence was introduced in support of the information, as follows: (1) The returns from the several counties showing the vote upon said amendment. (2) The canvass of said returns purporting to have been made by respondent and other members of the Board of State Canvassers upon May 16, 1893, from which it appeared that the said amendment was carried by a majority of 1,821 votes. (3) The canvass of said returns subsequently made by said officers, under the order of the Supreme Court, showing the defeat of said amendment by 11,455 votes. (4) Vouchers showing the amounts paid to respondent and other members of said board for their expenses in making said canvass. (5) A

stipulation by counsel that a short time prior to May 16, 1893, respondent was notified by his clerks that a tabulated statement showing the votes for and against said amendment had been prepared, and was ready to be signed by the members of the State Board of Canvassers; that thereupon respondent notified the other members of said board by telegram, in response to which they came to Lansing, and signed said tabulated statement prepared by their clerks; that neither of them compared or examined the returns from any county, nor did they compare them with the tabulated statement aforesaid; that they relied upon what their clerks stated about such statement being correct, and, believing it to be so, signed it; and that was all they had to do with it. The replication further stated that no evidence was offered upon the part of respondent; that an order adjudging respondent guilty, and removing him from his said office, was thereupon made, and duly served upon said respondent, upon the 19th day of February, 1893. As stated, a demurrer to this replication was filed.

The important questions presented were (1) the power of the Governor to remove respondent; (2) the sufficiency of the cause alleged.

The authority of the Governor to remove respondent is found in section 8 of article 12 of the constitution, which reads as follows: "The Governor shall have power and it shall be his duty, except at such time as the Legislature may be in session, to examine into the condition and administration of any public office, and the acts of any public officer, elective or appointed, to remove from office for gross neglect of duty, or for corrupt conduct in office, or any other misfeasance or malfeasance therein, either of the following State officers, to wit: The Attorney General, State Treasurer, Commissioner of Land Office, Secretary of State, Auditor General, Superintendent of Public Instruction, or members of the State Board of Education, or any other officer of the State except legislative and judicial, elective or appointed, and to appoint a successor for the remainder of their respective unexpired terms of office, and report the causes of such removal to the Legislature at its next session." It was contended that this section is in violation of the amendment of the constitution of the United States which provides that "no State shall deprive any person of life, liberty, or property, without due process of law." Const. U. S. Amend. 14, Section 1.

*Held*, that an office was not property within the meaning of the provision of the United States constitution above referred to, and that respondent took his office subject to the provision of the State constitution providing for his removal by the Governor.

It was further held that even if the office of respondent were a vested property right, a removal for cause, after investigation, by the Governor, by lawful administrative process, would be due process of law within the meaning of the above constitutional provision.

It was said, however, that the Governor, in this case, made his own charges and employed his own counsel, and was therefore to sit as judge in his own case.

*Held*, that though in investigating public offices, when the Legislature is not sitting, and removing officers for cause, under constitution, article 12, section 8, the Governor acts as both accuser and judge, his proceeding is not therefore invalid.

It was contended that the charges were insufficient because the act was not alleged to have been intentional, and because it was not gross neglect to permit an erroneous canvass by clerks; further, that the act was not

within the provision of section 8 above referred to, because it was an act done as a member of the Board of Canvassers, and not as Secretary of State, and that the only remedy was by impeachment by the Legislature.

*Held*, that since Howell's Statutes section 202 *et seq.* relating to the Board of State Canvassers, provides for neither deputies nor clerks, and requires the board to make and certify a statement of the votes cast, the members, in signing, without examining it, a clerk's statement of the votes cast on a constitutional amendment, were guilty of such gross neglect of duty as is ground for their removal, under constitution article 12, section 8.

*Held, further*, that the duty of the Secretary of State, as *ex officio* member of the Board of State Canvassers, pertains to his office as Secretary; and his gross neglect of such duty is ground for his removal from said office, under constitution article 12, section 8.

*Held, further*, that article 12, section 1 of the constitution, giving the Legislature sole power to impeach civil officers for corruption or crime, does not limit the Governor's power, under section 8, to remove for gross neglect of duty.

The sixth objection raised was as follows: "The notice served on respondents is void because it is not 'in the name of the People of the State of Michigan,' as required by section 35 of article 6 of the constitution, and it is not authenticated by the great seal of the State, as required by section 18 of article 5 of the constitution."

*Held*, that the provision of the constitution relative to process applies to the judicial department only, and not to a citation by the Governor to an officer to answer charges of official misconduct.

*Held, further*, that the provision of the constitution requiring the Governor's official acts to be authenticated by the great seal kept by the Secretary of State, does not apply to the Governor's citation to an officer (especially the Secretary himself) to answer charges of official misconduct.

Reported in 58 N. W. Rep., 611.

Attorney General vs. John G. Berry. *Quo warranto*. Judgment of Ouster.

This case involved the same state of facts, and is governed by the decision in the case of Attorney General vs. Jochim, *ante*.

Attorney General vs. Joseph F. Hambitzer. *Quo warranto*. Judgment of Ouster.

This case involves the same state of facts, and is governed by the decision in the case of Attorney General vs. Jochim, *ante*.

*Quo warranto* proceedings pending:

Attorney General vs. Patrick Nester.

Attorney General *ex rel.* Griffin vs. Reuben C. Tasker.

Attorney General *ex rel.* Scott vs. Charles Glaser.

Attorney General *ex rel.* Kamps vs. Govert Keppel.

## SCHEDULE D.

---

This schedule contains a list of chancery cases commenced or now pending, in which the State was directly interested.

Auditor General vs. Arthur Hill. Appeal from Chippewa. Decree modified.

There was but a single question in this case, and that one of fact. The proceeding was a petition filed by the Auditor General, under Act 195 of the Session Laws of 1889, for the sale of lands in Chippewa county for taxes assessed in 1889. Defendant asserted that the proceedings of the board of supervisors in relation to the equalization of the assessment rolls and apportionment of the taxes were not seasonably signed by the chairman of the board. Two witnesses testified that on February 3, 1891, the proceedings were not signed, and that upon February 14, 1891, another examination of the records showed them to be signed. The signatures were admitted to be genuine. The chairmen both testified that they did not remember when they signed, but expressed great confidence that it was not after the expiration of their respective terms, which was in each case before February 3, 1891. The circuit judge, allowing equal weight to the testimony upon each side, decided the case in favor of the petitioner, upon the presumptions attending official action. *Held*, that the weight of evidence was against the petitioner notwithstanding the presumptions attending official action, as there was greater room for the witnesses for the petitioner to be mistaken than for those of defendant to be, the latter, in preparing his case, having had occasion to look upon the records, and make memoranda of the defects relied on, and that at the time named.

Reported in 97 Mich., 80; 56 N. W. Rep., 219.

Auditor General vs. Arthur Hill. Petition to modify decree. Decree modified. For former report see 56 N. W. Rep., 219, *ante*.

This was an application to reform the decree in the Supreme Court upon the ground that it was too broad, in that it dismissed the Auditor General's petition as to all taxes assessed upon the lands involved in the case, and that the township tax, special school tax, road tax, bridge or building tax, reassessed orders, or township interest tax should have been

excepted. An investigation of the record and briefs showed that counsel agreed that but one question was raised by the record, viz., whether the record of the board of supervisors in relation to equalization and apportionment was duly signed. No claim was made by counsel in the brief that any such exception should be made, or that such taxes were involved. The record did not show what taxes were included in the decree below, or in the petition filed by the Auditor General either as to the nature of the taxes sought to be collected, or the amounts thereof. The answer prayed that the petition of the Auditor General might be dismissed as to such lands, and, so far as could be determined from the printed record, his right to such relief depended upon the single point litigated, upon which the opinion was based. *Held*, that ordinarily the court could not be depended upon to go outside of the printed record and briefs to ascertain what question might be involved in a case, and could not give parties a rehearing when they had not seen that the case was properly presented, but that in this case, the original record showed that such taxes were included; and as the list of lands involved was large, and the loss to the public under the decree entered would be great, the case was re-opened upon this application.

The proceedings of the board of supervisors which were held to be defective, were those relating to the equalization and apportionment and the raising of money for county purposes. It was further objected that it did not appear that the board made any examination of the certificates, papers, etc., required to be submitted by the townships, showing the amount to be raised therein, or that it heard and considered all objections made thereto by persons to be affected thereby.

*Held*, that failure to examine the certificates and papers required to be submitted to them by townships, showing the amount to be raised therein, does not invalidate said township taxes, unless the taxpayer can show that he has been denied a hearing thereon by the board.

Reported in 98 Mich., 326; 57 N. W. Rep., 168.

**The Minneapolis, St. Paul and Sault Ste. Marie Railway Company vs The State Board of Health. Injunction. Denied.**

The complainants in this case filed a bill in the United States Circuit Court for the Western District of Michigan, Northern Division, asking for a preliminary injunction against the State Board of Health restraining them from interfering with the free and unobstructed entry of all passengers coming over the Canadian Pacific Railway into the State of Michigan, who hold certificates of inspection of an officer of the United States showing their freedom from infectious diseases.

The opinion of the court, Judges Severens and Sage presiding, was as follows:

"The bill sets forth that the complainant, a corporation of the State of Michigan, is and has been for several years past, engaged, under a traffic arrangement with the Canadian Pacific Railway Company, in the transportation of passengers, on through tickets from Quebec westward through Canada and over the line of the complainant's railway to and through the States of Michigan, Wisconsin, Minnesota and North Dakota, also eastward, from those States, through Canada to Quebec, a large portion of the

passengers westward being persons traveling from Norway and Sweden to points in said States.

The defendants, it is averred, constitute the State Board of Health of Michigan, acting under an act passed by the Legislature of said State and approved June 20, 1885, entitled 'An act to provide for the prevention of the introduction and spread of cholera and other 'dangerous communicable diseases' as amended by an act approved April 25, 1893. The bill has attached to it as exhibits a copy of said acts, and of certain rules adopted by said board, purported to be issued under and by virtue of the authority conferred by said amendatory act. It is further averred that said board, acting through its secretary and one of its inspectors and in pursuance of said rules, is daily detaining and attempting to detain passengers on said Canadian Pacific Railway at the point opposite Sault Ste. Marie, Michigan, and prohibiting their entering the State of Michigan until they have undergone the quarantine detention, and until the disinfection of their baggage as prescribed in said rules. It is averred that this detention, examination and process of disinfection of baggage is applied to all immigrants irrespective of whether they came from an infected or healthy locality abroad, and without regard to their point of destination. It is further averred that all said immigrants and travelers have been, before said detention, inspected by United States officials detailed for said purpose, and that complainant has not received nor permitted to be conveyed within the State of Michigan any passenger, traveler or immigrant coming from any European port through the Dominion of Canada, excepting such as have presented a certificate of inspection of the United States inspector. It is also averred that said board is threatening to arrest officials and employes of complainant unless complainant shall submit to and comply with said requirements of said board.

The claim is that the rules and action of said board of health are in direct violation of section 8, article 1, of the constitution of the United States, in that they attempt to regulate and prohibit commerce with foreign nations; and that they are also in violation of the treaty made by and between the United States and Norway and Sweden and now existing; also that they are over, above and beyond the powers conferred upon said board by said act, and amendatory act, of the Legislature of Michigan. The bill then sets forth averments of irreparable damages and prays for an injunction.

The motion for a preliminary injunction will be overruled for the following reasons:

1. In *Brown vs. Maryland*, 12 Wheaton 419-433, Chief Justice Marshall recognized that the removal or destruction of infectious or unsound articles was undoubtedly an exercise of the police power of the State, and an exception to the prohibition resulting from the exclusive power of Congress to regulate the operations of foreign and interstate commerce, and he says that "Laws of the United States expressly sanction the health laws of the State." In the *License Cases*, 5 Howard, 504, 576, Chief Justice Taney declares that 'It must be remembered that disease, pestilence and pauperism are not subjects of commerce, although sometimes among the attendant evils. They are not things to be regulated and trafficked in, but to be prevented as far as human foresight or human means can guard against them.' In *Ceatcher vs. Kentucky*, 141 U. S. 47, Justice Bradley refers to these cases with approval, and states with great clearness and force the distinction between the exercise of its police power by a State,

and an attempt to legislate upon matters of interstate or foreign commerce, which are exclusively within the power of the Federal government. These authorities render it unnecessary to refer particularly to the cases cited for the complainant. It is sufficient to say that they all relate to State enactments concerning articles of commerce, and hence are not applicable here. Moreover, the quarantine act of Congress, approved February 15, 1893, expressly recognizes the validity of State laws, and in section 3 requires the supervising surgeon general of the marine hospital service to cooperate with and aid State and municipal boards of health in the execution and enforcement of their rules and regulations.

2. We find nothing in any existing treaty with Norway and Sweden which conflicts with the institution or enforcement by any one or more of the states of this Union of quarantine regulations.

3. We do not deem it necessary to express an opinion whether the provision of the Michigan statute making it a misdemeanor to violate the rules of the State Board of Health adopted in pursuance of the act, is constitutional or valid, for we should not, even if we were of opinion that it is unconstitutional, undertake to issue an injunction against criminal prosecution by the State. That the Legislature might authorize the board to adopt rules is, we think, beyond question. Such rules are essential to the proper enforcement of the law.

4. To the objection that passengers from non-infected countries and localities are detained, the answer is that such detentions are in the nature of the case, to a certain extent, unavoidable; and passengers from such countries and localities may have become properly subject to detention by reason of having mingled with others who could communicate pestilence or disease to which they themselves had been exposed or subjected. An opportunity for separation is indispensable also.

5. The objection that passengers who had certificates from United States inspectors were detained, is not tenable. The States may exercise their police power according to their own discretion and by means of their own officials and methods. The inconvenience resulting to immigrants and travelers from being halted and subjected to examination and detention at State lines is of trifling importance, at a time when every effort is required and is being put forth to prevent the introduction and spread of pestilential and communicable diseases.

The costs and charges which are incurred in such quarantine inspection may lawfully be imposed on the railway company as being incident to the business in which they are engaged. The costs of the motion will be taxed to the complainant."

Reported in 57 Fed. Rep., 276.

*State ex rel. Attorney General vs. the Flint & Pere Marquette Railway Company.* Error to Supreme Court of Michigan. Writ of error dismissed.

This was an appeal to the Supreme Court of the United States from a decision of the State Supreme Court (See *State vs. Railroad Company*, 89 Mich., 481).

The case involved the title to certain lands held by the railroad company, which the State claimed by virtue of the swamp land grant of 1850. The decision of the Supreme Court of Michigan was that the State, by its

long silence and acquiescence in the possession of these lands by the railroad company, was estopped from asserting any title in them. They based their decision upon the question of estoppel alone.

It was held by the Supreme Court of the United States that they had no jurisdiction to review the decision of the State court, as it rested upon a question which was not federal.

Reported in 14 Supreme Court Rep., 586.

Auditor General vs. Clarence W. Sessions, trustee. Appeal from Muskegon. Reversed and decree for complainant.

A petition was filed by the Auditor General in the circuit court for the county of Muskegon, asking a decree and order of sale of lands situate in that county delinquent for the taxes assessed thereon for the year 1890. Among the lands described in the petition were those in controversy here. The defendant appeared in the cause and asked—for various reasons, which will be hereafter stated—that no decree of sale be made against said lands. It appeared upon the hearing, and was not disputed, that the assessor for that year, on the first Monday in April, placed upon the assessment roll, and assessed to the owner thereof as follows: “Block No. 352 of the city of Muskegon, according to Smalley’s map thereof, \$1,000. S. W.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$ , section 25, town 10 north, of range 17 west, \$4,500. Both assessed to Alexander Rodgers.” It appeared that some time during the spring of 1890 the above described property was purchased from Rodgers by defendant, and the lands were platted by him into what is known as “Highland Park Addition of the City of Muskegon.” The plat was executed and acknowledged by the defendant and by the surveyor April 1, 1890. The plat was approved by the common council by resolution adopted April 15. It was examined and approved by the Auditor General May 2, and was recorded in the office of the register of deeds for Muskegon county May 14. The plat contained ten blocks with eighteen lots in each block, and five blocks with eight lots in each block. The assessor for that year assessed this property, describing it as the “Highland Park Addition, blocks one to fifteen, inclusive,” with the valuation upon each block as an entirety, the whole property aggregating the sum of \$5,500, the same amount as when assessed under the former description, thus assessing it twice. The board of review of the city of Muskegon convened on the 2d day of June, 1890, the date fixed by section 2, title 10, of the charter. On the 9th the defendant appeared before it, and filed a written protest against the double assessment, and asked to have the latter one stricken from the roll. Instead of so doing, and leaving the property assessed as it was originally by the assessor, the board struck out the first assessment, and left the last to stand, so that the property stood assessed as blocks in the Highland Park addition in the city of Muskegon. The board also on that day raised the valuation from \$5,500, as fixed by the assessor, to \$11,000. This was done by doubling the valuation on each block.

Section 2, title 10, of the charter provides that the board of review shall meet on the first Monday in June of each year; and during the first five days of its session, it may add to the roll the names of persons, descriptions of property, and may change the values of the property. The section further provides that, after the expiration of the first five days of its session, said board shall not add to the roll the name of any person, or descriptions of

any property; neither shall it increase any assessment thereof. The board, in this case, had been in session seven days when it doubled the assessment upon this property, contrary to the provisions of the charter. *Held*, that the assessment was therefore invalidated under the rule laid down in *Common Council of Village of Three Rivers vs. Smith*, 58 N. W., 481.

The court below overruled all the objections, holding the assessment valid. That decree, so far as it affected the rights of this defendant and this property, was reversed, and a decree entered in the Supreme Court in favor of defendant, setting aside the tax upon the premises, as described by lots and blocks. But a decree was entered in the Supreme Court holding the tax valid, as originally assessed, and to be enforced in a proper proceeding, unless defendant should pay the same, with interest thereon, from the time said tax became a lien.

Reported in 58 N. W. Rep., 1014.

*State of Michigan vs. The Michigan Mutual Live Stock Insurance Company of Cadillac.* Bill for appointment of a receiver. Hearing was had December 21, 1893 and H. M. Dunham of Cadillac was appointed receiver.

*Commissioner of Banking vs The Ingham County Savings Bank.* Application for receiver withdrawn.

*Township Treasurer vs. A. P. Cook Company, Limited, et al.* Bill to restrain waste.

This case was commenced in the circuit court for the county of St. Joseph, but on account of the inconvenience to counsel, and for other reasons, a written stipulation was filed to discontinue the case in that county, and another case was commenced in the Ingham circuit by the State, the Attorney General acting as informant.

List of chancery cases pending:

*Maria B. Pinckney vs. Commissioner of the Land Office.*

*State vs. Jackson, Lansing & Saginaw Railroad Company.*

*State vs. Grand Rapids & Indiana Railroad Company.*

*Attorney General vs. Hazen S. Pingree et al.*

*State ex rel. Attorney General vs. A. P. Cook Co., Limited, et al.*

## SCHEDULE E.

---

This schedule contains a list of all chancery cases commenced, determined or pending, in which some State officer has been made a party, and in which the State has some interest. These cases have been referred to the prosecuting attorneys of the various counties in which they are commenced, and left in their charge.

Sally B. Rice, *et al* vs. Auditor General, *et al*. Injunction bill. Bay county.

Andrew J. Ervey vs. Auditor General. Bill in chancery. Gratiot county.

Sarah A. Mason vs. Auditor General, *et al*. Motion to set aside tax sale. Saginaw county.

Philemon H. Post vs. Auditor General. Bill in chancery. Gratiot county.

Washington G. Wiley vs. Auditor General, *et al*. Bill in chancery. Ingham county.

Auditor General, *et al* vs. Martha Benedict. Motion to amend decree. Alcona county.

In the matter of John M. Neff. Petition to set aside tax deed. Isabella county.

In the matter of James Reddy. Petition to set aside tax deed. Isabella county.

John Jenkinson vs. Auditor General, *et al*. Bill to set aside tax sale. St. Clair county.

William H. Simpson, *et al* vs. Auditor General, *et al*. Bill to restrain issuing of tax deed. Iosco county.

Nancy C. Avery, *et al* vs. Michael Heemer, *et al*. Bill in chancery. Sanilac county.

Nancy C. Avery, *et al* vs. Herbert Buchan, *et al*. Bill in chancery. Sanilac county.

Nancy C. Avery, *et al* vs. Thomas Nicol, *et al*. Bill in chancery. Sanilac county.

In the matter of the petition of the Auditor General for the sale of certain lands for 1888 taxes. Petition to set aside sale and decree. Muskegon county.

In the matter of the petition of the Auditor General for the sale of certain lands for 1889 taxes. Petition to set aside sale and decree. Muskegon county.

In the matter of the petition of the Auditor General for sale of certain lands for taxes of 1889. Motion to set aside sale. Alcona county.

James Clark *vs.* Auditor General, *et al.* Injunction. Bay county.

In the matter of the petition of the Auditor General for sale of certain lands for taxes of 1890. Petition to set aside sale and decree. Alcona county.

In the matter of the petition of the Auditor General for the sale of certain lands for taxes of 1889. Petition to set aside sale and decree. Alcona county.

In the matter of the petition of the Auditor General for the sale of certain lands for taxes of 1891. Petition to set aside sale and decree. Alcona county.

In the matter of the petition of the Auditor General for the sale of certain lands for taxes of 1887. Petition to set aside sale and decree. Muskegon county.

Walter Crane *vs.* Auditor General, *et al.* Injunction. Wayne county.

Emily B. Hembling *vs.* Auditor General, *et al.* Bill in chancery. Bay county.

Horace G. Snover *vs.* Auditor General, *et al.* Bill in chancery. Sanilac county.

Louisa Burtram *vs.* Auditor General, *et al.* Bill in chancery. Ionia county.

## SCHEDULE F.

---

This schedule contains a list of insurance companies whose articles of association, amendments and extensions thereto have been approved by the Attorney General during the fiscal year ending June 30, 1894.

The Legislature of 1893 passed an act requiring insurance companies whose articles were to be approved by the Attorney General, to pay an approval fee of five dollars to the Attorney General for the use of the State. Since the law went into effect forty dollars have been collected and turned into the treasury from this source.

Farmers' Mutual Fire Insurance Company of Calhoun county. Amendments approved July 1, 1893.

Mason Township Mutual Insurance Company. Charter approved July 29, 1893.

The Northern Accident Association of Kalamazoo county. Charter approved August 1, 1893.

German Farmers' Mutual Fire Insurance Company. Revised charter approved January 15, 1894.

Farmer's Mutual Fire Insurance Company of Dowagiac. Amendments approved January 30, 1894.

Central Michigan Live Stock Insurance Company of Detroit. Amendments approved May 14, 1894.

Citizens' Mutual Fire Insurance Company of Kent, Allegan and Ottawa counties. Charter approved February 23, 1894.

Preferred Bankers' Life Assurance Company of Lansing. Amendments approved February 26, 1894.

Farmers' Mutual Fire Insurance Company of Huron county. Charter approved May 23, 1894.

Citizens' Mutual Fire Insurance Company of Kalamazoo county. Amendments approved April 27, 1894.

Preferred Masonic Mutual Accident Association of America. Amendments approved March 30, 1894.

## SCHEDULE G.

---

### OPINIONS OF THE ATTORNEY GENERAL.

---

#### *Probate clerk—Eligibility of women—Issuing citations.*

Women are eligible to appointment as probate clerk. A probate clerk may issue a citation, it not being a judicial act.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, July 20, 1893. }

HON. JOHN C. LAING, *Judge of Probate, Caro, Mich.:*

DEAR SIR—Your favor asking whether in my opinion women are eligible to appointment as clerk of probate court, is received.

The law contains no limitation whatever as to who the party appointed shall be, and I see no reason why women are not eligible to appointment as clerk of probate court. I think the appointment would be controlled by the case of *Wilson vs. Circuit Judge*, 87 Mich., 493.

The clerk would have authority to issue a summons or citation for the hearing, as the issuing of the summons or citation is not a judicial act.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

---

#### *Voting of taxes to build court house—Sufficiency of notice.*

Under sections 490 and 492 of Howell's Statutes, a notice given less than two weeks before the time fixed for voting a tax upon the county to build a court house, is insufficient, and a tax voted by virtue of such notice is void.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, July 22, 1893. }

ELMER KIRKBY Esq., *Prosecuting Attorney, Jackson, Mich.:*

DEAR SIR—Your favor stating that at a special meeting of the board of supervisors in February last they passed a resolution for the purpose of raising thirty thousand dollars for the erection of a new jail on the

present site, to be submitted to the electors on April 3, 1893, and that the sheriff gave notice of such proposition on March 25, 1893, and that no notices were posted in the wards and townships, is received.

The question submitted is whether the notice given is sufficient under sections 490 and 492 of Howell's Statutes, and whether the failure to give other notice would vitiate the election.

Section 492 provides, "Whenever it shall become necessary, under the provisions of this act, to submit to the vote of the electors of any county the question of raising any sum of money by loan or by tax, the said board, after having determined the sum necessary to be raised, whether the same shall be raised by loan or by tax, shall proceed to give the notice of such determination and of the time when the question shall be submitted to the electors of such county in the several townships, which notice shall be for the same length of time and posted in the same manner as required by the eighteenth section of this act."

Said section 18 referred to provides: "They shall thereupon cause notice thereof to be posted up in three public places in each township, and in each ward of any city in the said county, at least thirty days previous to the time fixed for the submission aforesaid, and shall cause the same to be published in one newspaper printed in the county \* \* \* for at least three successive weeks, previous to the time of such submission and vote."

It is very clear that the notice referred to is insufficient in point of time, it being given less than two weeks before the time fixed by the board for submitting the proposition to a vote of the electors, and no notice by posting having been given. Had the matter which was submitted been one which would necessarily have been submitted at a general election, possibly the failure to give the notice would have been deemed simply an irregularity, and the statute relative to the time of publishing the notice would be considered directory rather than mandatory.

It will be observed, however, in this case, that the time of submitting the proposition is left entirely to the board of supervisors. There is nothing requiring the matter to be submitted at a general election, and hence the voters are not presumed to know that such a question will be submitted at a general election for their consideration.

Under this statute the board of supervisors might have called a special meeting, and so far as the question here at issue is concerned, the same rule should apply in submitting this question at a general election as would apply to the question submitted at a special meeting; that is to say, the question to be submitted is a special question, and there being nothing in the law requiring it to be submitted at a general election, the rules requiring notice for special meetings would have particular application in this case.

Cooley on Taxation (page 246) lays down the rule that "All special meetings must be regularly called as the statute may have prescribed; \* \* \* That it shall be notified either by warning delivered, or its contents stated, to the several voters, or by a notice published or posted in a manner particularly indicated by the statute; and that the subject to be considered at the meeting shall be specified in the warning or notice. With all these provisions there must be a careful compliance."

The ticket on which the question was submitted at your general election contains five separate propositions. Preceding the question of voting for

raising the money for building a new jail are the words, "Proposed loan for building a jail." The proposition really voted upon by the board of supervisors was the "Proposition of raising the sum of thirty thousand dollars for the purpose of building a new jail, to include the residence of the sheriff on the present site." The question as to the sheriff's residence, or the site where the jail was to be built, is not referred to in any manner in the proposition submitted to the people. Neither is there anything in the proposition voted on by the supervisors concerning the "loaning" of any money. The fair inference from the entire proposition would be that a tax was to be spread upon the roll of ten thousand dollars each year for three successive years. The notice given by the sheriff has no reference whatever to loaning or borrowing any money, but is for the purpose of raising the sum of thirty thousand dollars, payable in three equal annual payments, namely, January 1, 1894, January 1, 1895, January 1, 1896, for the purpose of building a new jail for Jackson county, Michigan.

The question submitted to the voters upon the ticket is not the same question voted upon by the board of supervisors, neither is the notice given such a notice as is provided for by the statutes of the State.

In the case of *Bowen vs. King*, 34 Vermont, 156, it was held that a tax could only be voted at a meeting legally warned. In the following cases it was held that a school district tax voted at a meeting not legally called was void:

*Haines vs. School District*, 41 Maine, 246;  
*Rideout vs. School District*, 1 Allen, 232;  
*People vs. Castro*, 39 Cal., 65.

In my opinion the provisions of the statute relative to notice are mandatory, and that a tax voted at an election, where the notice was published less than the statutory time, and no notice by posting as required by law was given, is void.

Very respectfully,

A. A. ELLIS,  
*Attorney General.*

---

*Private roads—Credit of labor upon—Damages.*

Where a private road is laid through a man's farm upon the application of some individual whose premises lie off from the public highway, the damages are assessable against the applicant.

Labor done by such a party on the private road, which, in the opinion of the commissioner, is necessary to keep the same in repair, should be credited on his assessment.

STATE OF MICHIGAN, }  
 ATTORNEY GENERAL'S OFFICE, }  
*Lansing, July 22, 1893.*

E. P. CUMMINGS, Esq., *Grand Haven, Mich.:*

DEAR SIR—Your favor received.

If you should have a private road opened from your premises to the main highway, you would be required to bear the expense of the proceed-

ings and pay the amount of damages. Section 14, article 18 of the constitution; section 1392 of Howell's Statutes.

The work done by you on such private road to keep the same in repair, which the commissioner may deem necessary, should be credited upon your assessment by him, or he could attach your road to some road district. See section 1335 Howell's Statutes.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

---

*Tax certificates—Register of deeds—Fees—Recording.*

The certificate furnished by the Auditor General or county treasurer under section 135 of the tax law of 1893, should be filed in the office of the register of deeds.

Such certificate need not be recorded, but a certificate of the fact as to whether such certificate was presented should be recorded with the deed.

The register of deeds is entitled to additional fees for filing the Auditor General's or county treasurer's certificate, and for recording his certificate of the fact that such certificate was furnished.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, July 22, 1893.*

HENRY FENTON, *Register of Deeds, Bay City, Mich.:*

DEAR SIR—Your favor asking whether in my opinion the certificate furnished by the Auditor General or county treasurer under section 135 of act number 206 of the Laws of 1893 should be recorded with the deed or returned to the party furnishing the same, and whether the register of deeds is entitled to any extra compensation by reason of the certificate, is received.

In reply I would say that it is my opinion that the certificate furnished by the Auditor General or county treasurer, and which is to be presented to you before the deed is entitled to be recorded, need not be recorded with the deed, but it should be filed by you in your office, as it is the best evidence that you have complied with the law.

The certificate made by you on the deed itself of the fact that the other certificate has been furnished should be recorded as a part of the deed, and you would be entitled to additional fees for recording such certificate. Your fees would be so much per folio, as provided by section 9022 of Howell's Statutes.

You would also be entitled to a fee for filing the Auditor General's or the county treasurer's certificate in your office. This fee is provided by the next to the last subdivision of the section above referred to.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Expenses of Military Department—By whom borne—Military funds—Board of State Auditors.*

The expenses of the Military Department are to be paid out of the military fund upon the warrant of the Auditor General. The Board of State Auditors has no authority to allow such claims.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, July 26, 1893.

*To the Honorable Board of State Auditors, Lansing, Mich.:*

GENTLEMEN—Your favor referring to this department for my opinion, the requisition made by the Assistant Quartermaster General, by which you are requested to furnish for the use of the Military Department fifteen thousand (15,000) nine-inch white envelopes, three reams of flat paper, 12x17, 24 pounds, etc., and asking whether the Board of State Auditors should order and pay for articles for the Military Department, is received and considered.

In reply I would say that the State Military Department is organized under chapter 24 of Howell's Statutes of this State, the same being act 16 of the Public Acts of 1862 as amended. By virtue of that act the Quartermaster General's Department is organized. (See sections 891 to 896, inclusive, of Howell's Statutes.)

Section 894 provides that "the Quartermaster General shall provide the several departments, on their requisitions, the necessary roster, books of record, blank commissions, enlistments, drafts, discharges, rolls, and other papers required by law and regulations, at the expense of the State." Section 9861 of Howell's Statutes, which is a part of the same chapter, provides, "All expenses incurred for the maintenance of the military forces of this State, by virtue of any of the provisions of this act, shall be paid paid by the State Treasurer, from and out of the State military fund in the State Treasury, upon the warrant of the Auditor General," and so much of section 962 as relates to this matter provides, "The Auditor General shall, and he is fully authorized and empowered to draw his warrant upon the State Treasurer for the expense made or created under this act, upon the estimates of the Quartermaster General or the Paymaster General, approved by the Commander-in-chief and the State Military Board."

The above sections concerning the meaning of paying for supplies for the Military Department of the State of Michigan are too plain to need any interpretation. They expressly provide that when accounts made by the Quartermaster General or Paymaster General are approved by the Governor and the State Military Board, the Auditor General shall draw his warrant for the same. The Board of State Auditors have nothing whatever to do with such accounts. There are only two classes of accounts that can be audited by your board; first, those which are by the statutes of the State directly referred to you; and second, all those claims against the State where no express provision of law is made for their payment.

The latter power is given to your board under article 8, section 4, of the constitution, which provides that the Board of State Auditors are "to examine and adjust all claims against the State not otherwise provided for by the general law."

Supplies for the Military Department are expressly provided for by the general law, and are to be paid on the warrant of the Auditor General,

after having been approved by the Commander-in-chief and the Military Board.

The Quartermaster General is authorized by the statute itself to furnish the necessary supplies for his department and the other military departments, and on their being approved in the manner provided by law by the Military Board and the Commander-in-chief, they should be paid for on the warrant of the Auditor General out of the State Treasury.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*State bids—Power of Auditor General—Interest—Certificates of error.*

The Auditor General is not authorized to sell State bids under act 206, Public Acts of 1893.

The rate of interest which should be charged when the lands have been bid off to individuals at the May sale in 1893, is governed by the law of 1889, but when bid off to the State is governed by the law of 1891.

The rate of interest which should be charged on the taxes of 1891 and 1892, no sale having taken place, should be eight per cent from the first day of March after the same were assessed.

The Auditor General has no power to issue certificates of error where lands have been erroneously sold and deeds have been executed by the county treasurer under the law of 1891.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, July 27, 1893.*

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor submitting the following questions is received:

"First, Are you of the opinion that under act 206, Laws of 1893, this office has the power to sell State bids and give certificates of purchase, subject to redemption? If so, when should State bids, tax of '90, sold under the law of 1889, May 1893, and sold by this office as State bids, be subject to deed if not redeemed, and from what date and at what rate should interest be computed?"

"Second, What rate of interest should be computed on redemptions of sales to individuals made in May, 1893, tax of 1890, and what rate of interest should be computed on lands bid to State?"

"Third, What interest should be charged on lands subject to payment of taxes for years 1891 and 1892, and from what date computed? And also, do you think this office has the power to issue a certificate of error against State tax land deeds, erroneously sold and executed by the county treasurer under the laws of 1891."

In reply to your first question concerning the sale of State bids, I am of the opinion that the Auditor General is not authorized to sell State bids under act No. 206, Public Acts of 1893.

Section 68 of act 195 of the Laws of 1889, expressly authorized the Auditor General to sell State bids. That section contained the following clause:

"All lands bid into the State remaining unredeemed and on which

redemption has not expired, shall be subject to sale at any time, except as herein provided, by the Auditor General, and upon payment therefor, on his certificate to the State Treasurer of the amount for which said lands were bid off to the State, with interest at the rate of one per cent for each month or part of a month, to be computed from the first day of May of the year in which such lands were bid off to the State to the time of application for the purchase thereof, and the Auditor General shall issue to the purchaser a certificate of purchase. If any bids so purchased before redemption has expired shall be redeemed, the purchaser shall be entitled to the amount paid for the redemption thereof, except the office charges; if otherwise discharged, then to the amount paid by him with interest at seven per cent per annum from the date of purchase to the date of refunding; but if not redeemed or otherwise discharged, the Auditor General or his deputy shall, on surrender of such certificate of purchase, execute to the purchaser or his assigns a deed for the lands therein described."

The above section is entirely omitted from the law of 1893, as it was from the law of 1891. In each of the latter acts there is a section providing "Neither the sale of State tax lands nor the sale of any bids of the State for which the time of redemption has not expired, shall in any wise prejudice the rights to enforce collection of any tax subsequent to the year or years for which the same has been sold as aforesaid," etc. That clause is substantially the same as the latter part of section 68 of the law of 1889, which provides "Every such sale (which refers to both the sale of State tax lands and State bids) shall be subject to all taxes assessed and levied on such lands, subsequent to the taxes for which the lands were bid off in the name of the State, and the deed shall so state."

Neither the law of 1891, nor the law of 1893, contain any direct authority for the Auditor General to sell State bids.

The authority of the Auditor General to sell State tax lands is found in section 84 of the law of 1893, which provides that "Any person may purchase any State tax land by paying therefor the amount for which the same was bid off to the State, with interest on the same at the rate of eight per cent per annum, from the date of sale, *together with the other taxes remaining a lien upon such land at the time of the purchase so made, with the interest thereon at the rate provided in this act.* Upon making a payment as above, such purchaser shall be entitled to and receive a certificate and deed conveying all the right, title and interest of the State to such tax lands acquired or accrued by virtue of the original sale or sales to the State."

It will be observed that the party purchasing must not only pay the amount that was originally bid by the State with the interest thereon, but he must also pay all other taxes remaining a lien upon the land.

There is no authority anywhere in the law for the Auditor General to refund, in case of a redemption, anything except the money originally bid for the lands and interest thereon. Therefore, if a person should purchase any of the State bids, except in case he purchase the same as part of the payment required under section 84, he would necessarily lose all of the sums paid by him for the taxes subsequent to the taxes for which the lands were bid off to the State.

The right of a person to redeem any lands bid off in the name of the State, is found in the first part of section 74, which reads as follows: "Any person owning any of the lands sold as aforesaid, or any interest therein, may at any time, within one year from the date of such sale, redeem any

parcel of such lands, or any part or interest in such lands, \* \* \* by paying to the Auditor General or county treasurer the amount of the sale of the parcel of land, or the portion thereof wished to be redeemed, and interest thereon from the date of such sale."

You will readily see the difference between section 74 and section 84; a person can redeem by paying the amount of the original bid and interest, while you have no authority whatever to sell unless you not only receive the amount of the original bid, *"together with the other taxes remaining a lien on such lands at the time of the purchase so made, with the interest thereon at the rate provided in this act."*

Section 82 provides that a deed shall be made after the time of redemption where lands are sold under sections 80 and 81, and it has been assumed that because section 84 provides that the party shall have a certificate as well as a deed, and that "all of the provisions of law relative to deeds executed by the Auditor General on the surrender of certificates of sale made by the several county treasurers shall be applicable in making deeds for such purchases," that therefore a person could take a certificate, then wait for the time of redemption and be entitled to a deed of a State bid. The trouble with this theory is this, there is no time for redemption of land sold under sections 80 and 81.

The person is entitled to his deed at any time after he bids off the land at the public sale, unless some other right, not material to this inquiry, intervenes.

A further trouble has already been suggested in the fact that there is no authority given the Auditor General to refund, in case of a redemption, anything but the original purchase and interest. I am of the opinion that section 84 contemplates that the deed in case of the sale of State tax lands, shall be given at once or within a reasonable time.

Another reason why I do not think that the law contemplates the sale of State bids is found in the fact that the words "State tax lands" and "State bids" are two separate and distinct things, both of which are well understood in the tax language of the State, and the only authority given to the Auditor General to sell relates directly to State tax lands. No reference whatever, in the authority to sell, is made to State bids.

The distinction is made by the act of 1893 itself, in section 85, in the clause, "Neither the sale of State tax lands, nor the sale of any of the bids of the State."

The same question was submitted to my office under the law of 1891, and I made a similar holding under that law. (See Attorney General's report for 1892, page 143.)

In reply to your second question concerning the rate of interest that should be charged when the lands have been bid off to individuals at the May sale of 1893, and what rate should be charged when they are bid off to the State, I would say that I am of the opinion that the right of redemption and the rate of interest in case they were bid off to an individual, is covered by section 64 of act number 195, Public Acts of 1889. Section 111 of act number 200 of the Public Acts of 1891, expressly provides that "All lands heretofore returned delinquent that have not been offered for sale, shall be offered for sale by the Auditor General under Act 195 of the Laws of 1889, and all proceedings relative to the sale of such lands, and of redemption thereof, and the issuing of deeds therefor, shall be conducted according to the provisions of said act 195 of 1889, by the Auditor General."

The above proviso applies where the lands have been bid off at the May sale to individuals, but in case they were bid off to the State, the last proviso in section 111 of act number 200 of the Public Acts of 1891 would apply, which provides, "Any lands offered under the above proviso and not sold, or that shall be bid off for the State, shall after such offer or sale to the State be subject to the other provisions of this act." The act referred to, to which such lands would be subject is act number 200 of the Public Acts of 1891. In such case, the rate of interest and the time of redemption, it seems to me, would be governed by section 68 of act number 200 of the Public Acts of 1891.

Sections 125 and 126, which repealed act number 200 of the Public Acts of 1891 expressly reserves all rights that may have accrued to the State or an individual.

I am of the opinion that the State, or any individual who has purchased lands under the law of 1891, or under the proviso in section 111 of the Law of 1891, would have a right to exact the rate of interest given by the several sections in force and applying to the sale at the time it was made.

It will be observed, however, that in case the lands are not redeemed within the time provided by law, then in such case on a sale at public auction, the Auditor General can only compute the interest at the rate of eight per cent. (See rate of interest to be figured on schedule under section 78 of act No. 206, Public Acts of 1893.) The same rate is provided on the sale of State tax lands under section 84 of the same act.

In reply to your third question, I am of the opinion that interest charged on the taxes of 1891 and 1892, no sale having taken place, should be eight per cent, and that the interest should be computed from the first day of March next after the same were assessed. (See sections 59 and 89 of act No. 206 of the Public Acts of 1893.) This, however, I do not mean to apply to part paid homestead lands returned under section 91 of act No. 200, Public Acts of 1891. The last named section apparently works a forfeiture itself, at least the State would have a right, in case the condition were broken, to declare the certificate of purchase void, and I think such right is reserved under sections 125 and 126, of act No. 206, aforesaid.

It is my opinion that the Auditor General has no power legally to issue certificates of error against State tax land deeds, where lands have been erroneously sold and deeds executed by the county treasurer under the law of 1891, prior to the time the law of 1893 took effect. It is my opinion that the authority to issue certificates of error, under section 98 of act No. 206 of the Laws of 1893, is confined to deeds erroneously issued by the Auditor General.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General*

#### *Tax Deeds—Certificates—Recording.*

Tax deeds do not come within the exceptions which exempt certain deeds from the certificate required by section 135 of the tax law of 1893, and such certificate must be obtained before deed can be recorded.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, July 27, 1893.

C. S. REILLY, *Prosecuting Attorney, Cheboygan, Mich.:*

DEAR SIR—In reply to your question as to whether or not a certificate must be furnished with a tax deed under section 135 of act 206 of the

Public Acts of 1893, I would say that it is my opinion that tax deeds do not come within the exception which exempts certain deeds from certificates. I think that the words in the same clause after "sheriff or commissioner's deeds," "or by virtue of any decree of any of the courts of this State" relate back to the said "sheriff or commissioner's deed," and it does not apply to deeds made by the Auditor General under the decree of the court; and therefore a tax deed, although it was made on the sale of delinquent lands, would not come within that provision. There could be no question in any case concerning the ordinary State tax land deed, and it is my opinion that it was the intention of the Legislature to put both the State tax land deed and the delinquent tax land deed upon the same footing, and that each would require a certificate that the tax had been paid before it would be entitled to record.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

---

*Mortgages—Recording—Certificates.*

A mortgage in this State conveys no title to the mortgagee, but is a security merely for debt, and hence does not come within the provisions of section 135 of the tax law of 1893, requiring a certificate to accompany deeds, land contracts, plats and "other instruments for the conveying of title to any real estate" when presented for record.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, July 31, 1893.*

EPHRIAM MARBLE, *County Treasurer, Marshall, Mich.:*

DEAR SIR—Your favor of July 12, asking whether or not under section 135 of act number 206, Public Acts of 1893, a certificate must be furnished by the county treasurer or Auditor General showing that the taxes are paid, before the mortgage is entitled to record, is received.

Section 135 only mentions specifically deeds, land contracts and plats. "All words and phrases shall be construed and understood according to the common and approved usage of the language." (Howell's Statutes, section 2). Deeds, land contracts and plats are not used in common language when referring to mortgages.

Section 135, in addition to the foregoing, also includes "other instruments for the conveyance of title to any real estate," and as a mortgage is not included in the words "deeds, land contracts and plats," the only question is, does a mortgage come within the clause "other instruments for the conveyance of title to any real estate?"

A mortgage in this State conveys no title to the mortgagee, but is a security merely for debt, and the mortgagee before foreclosure has no legal interest in the mortgaged premises.

Dougherty vs. Randall, 3 Mich., 581.  
Batty vs. Snook, 5 Mich., 231.  
Caruthers vs. Humphrey, 12 Mich., 270.  
Wager vs. Stone, 36 Mich., 364.

Mortgages would not be included within the clause "other instruments for the conveyance of title to any real estate."

I am therefore of the opinion that a certificate showing the payment of taxes cannot legally be required by registers of deeds before recording real estate mortgages.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Insurance law—Title of act—Repeal—Unauthorized insurance.*

Act 101 of the Public Acts of 1893 does not in any manner abrogate or abridge act 74 of the Public Acts of the same year.

The provision in section 5 of said act 101, allowing the commissioner to permit unauthorized companies to place insurance on property within this State on an affidavit being furnished by the owner of such property that he is unable to procure all the needed insurance from authorized companies, is unconstitutional and void, not being within the title of said act.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, August 3, 1893. }

HON. THERON F. GIDDINGS, *Commissioner of Insurance, Lansing, Mich.:*

DEAR SIR—Your favor submitting the two following questions for my opinion, is received.

*First*, "Does act number 101, Laws of 1893 repeal or make inoperative any of the provisions of act number 74 of the same year?"

*Second*, "Under act number 101, has the Commissioner of Insurance any authority to go back of the affidavit furnished under section five and make an investigation, or is he compelled to authorize the insurance on presentation of the affidavit?"

In reply to your first question I would say that it is my opinion that act 101 of the Public Acts of 1893 does not in any manner abrogate or abridge act 74 of the Public Acts of the same year.

Second, Your second interrogatory necessarily raises the question of the validity of section five of act number 101 of the Public Acts of 1893.

Your authority under the affidavit furnished depends upon the validity of this section.

Section 20 article four of the constitution expressly provides that "No law shall embrace more than one object, which shall be expressed in its title."

Act number 101 is entitled "An act making it unlawful for foreign insurance companies, *legally admitted to do business in the State of Michigan*, to place or caused to be placed, except through a duly licensed agent in this State, insurance on property in the State of Michigan, in offices outside of the State of Michigan."

The object of this act, as expressed in its title, is clearly to require the agents of foreign insurance companies which have been legally admitted to do business in this State, to transact the business through duly licensed agents residing in the State of Michigan.

The title makes no reference in any manner to any company not author-

ized to transact business in this State, nor does it purport under any circumstances to grant a license to such company. The sole and only object, as expressed in the title, is to provide the manner in which companies, authorized to do business in this State, may transact their business.

When we look at section 5, it is plain to see that it relates to an entirely different matter. That section, by implication, authorizes, under certain circumstances, foreign insurance companies *not authorized to transact business* in this State, to do business herein, and that without any reference whatever to whether the agent who transacts business for them is authorized to do business in this State or not. Said section 5 provides: "Any individual, firm, corporation or association who are unable to procure sufficient indemnity in the companies which have been legally admitted to do business in this State, may file an affidavit with the Commissioner of Insurance that they are unable to procure all the needed insurance; and in such case they may be authorized to procure such needed additional indemnity from companies not represented in this State: *Provided, That* such individual, firm, corporation or association shall report to said commissioner the amount of such policy or policies, together with the amount of premium paid therefor, and pay to the Commissioner of Insurance a sum of money equal to a tax of three per cent upon the amount of premiums named in said policy or policies."

The section above quoted, by implication, authorizes any outside insurance company, provided that it can procure the affidavit of a party that he cannot procure sufficient insurance in companies authorized to do business in this State, to issue its policies and transact business in this State by paying three per cent of the premiums received. This is to be done through the insured, but the effect is the same. In short, the whole policy of the statutes of the State keeping out foreign unauthorized insurance companies, is in this section waived upon the affidavit of some person who desires to obtain insurance in outside companies, and all of this is to be done by a section in an act which makes no reference whatever to this matter in the title.

I have no doubt whatever that section 5 is unconstitutional and void for the reason above stated. Had I any doubt, I should hesitate to advise your office to disregard that section; but inasmuch as the unconstitutionality of this section appears so plain to me, and the interests to be injuriously affected by it are so great, I deem it unwise to await any affirmative action in the courts, and give it as my opinion that it is the duty of your department to entirely disregard section 5 of act 101, of the Laws of 1893, and to allow no companies to transact business in this State who are not authorized by the general law.

Respectfully,

A. A. ELLIS,  
Attorney General.

*Liquor law—Agents—Sale of property—Transfer of license—Duplicate licenses.*

If the appointment of an agent is simply a scheme to secure the use of a State tax or license, the person who thus sells intoxicating liquors would be guilty of a violation of the law.

The county treasurer has no authority to issue a duplicate license unless the original is lost or destroyed.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, August 3, 1893.*

S. N. DUTCHER, *Prosecuting Attorney, Newberry, Mich.:*

DEAR SIR—Your favor of July 28 received and contents noted.

If the appointment of an agent is simply a scheme for the purpose of getting the use of a State license or tax, the person who thus sells intoxicating liquors would be guilty of a violation of the law.

Black on Intoxicating Liquors, section 132.  
Heath vs. State, 105 Ind., 342.

The whole question submitted by you depends upon the good faith and *bona fides* of the transaction. Of course if Dall had a right to and did actually appoint a third person in good faith to act for the firm, and the person who was appointed was really acting for the firm, and not for himself in the name of the firm, then the party appointed could sell, not for himself or for his own use and benefit, but for Halvardson & Dall, and for their use and benefit.

The law does not provide for any duplicate license, and unless the original license was lost or destroyed, the county treasurer would have no right to issue a duplicate. If Dall has gone away, and the firm of Halvardson & Dall has in fact been dissolved, Halvardson would have no legal right to appoint any person to act for them, and in no case would he have any right to name a person to act in the name of Halvardson & Dall, but in fact for the use and benefit of the agent so appointed.

There is no doubt under the law but what a man can conduct a liquor business through his agent just the same as he can conduct any business; but under our liquor law he cannot allow some one else to transact business in his name for their use and benefit, and cover it up on the theory that the party thus acting is acting as agent for the original parties.

In the late case of the People vs. Sykes, *ante* p. 23, the Supreme Court held that a license or tax was personal to the person to whom it was issued, and was not transferrable, and that the executor or administrator of an estate has no right to transact business under it. The same principal would apply in this case.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Statutes — Repeal — Sentence to Upper Peninsula prison for misdemeanor — Justices of the peace.*

Act 118 of the Public Acts of 1893, providing that persons convicted of misdemeanors, where the sentence for such misdemeanor is less than six months, shall not be received into any of the prisons of this State, repeals the provision in section 1997a1 of Howell's Statutes, authorizing justices of the peace in the Upper Peninsula to sentence disorderly persons to the branch of the State Prison at Marquette.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, August 3, 1893.

HON. J. R. VANEVERA, *Warden Upper Peninsula Prison, Marquette, Mich.:*

DEAR SIR—Your favor of August 2, asking for my opinion regarding the right of justices of the peace to commit to the Upper Peninsula prison under section 1997a1 of Howell's Statutes, is received and considered.

Prior to the passage of act number 118 of the Public Acts of 1893, it appears to have been proper for justices of the peace to commit to the State House of Correction and branch of the State Prison in the Upper Peninsula, any male person convicted of being a disorderly person, who is sentenced to imprisonment.

Section 29 of act number 118 of the Public Acts of 1893, entitled "An act to revise and consolidate the laws relative to the State Prison, to the State House of Correction and branch of the State Prison in the Upper Peninsula, and to the House of Correction and Reformatory at Ionia, and the government and discipline thereof, and to repeal all acts inconsistent therewith" provides that courts of criminal jurisdiction may sentence to such prisons male persons over fifteen years of age who shall be convicted of any misdemeanor, where the sentence for such crime or misdemeanor shall not be less than six months.

That section also provides what persons convicted of felonies may be committed to such prisons, but that matter is not material to this inquiry, as a person convicted of being a disorderly person must come within the class known as guilty of misdemeanors.

Under section 1997a3 justices of the peace could try any person charged with a first or second offense. The outside limit of the punishment by imprisonment for the first offense is fixed by section 1997a1 at thirty days, and for the second offense at ninety days, and under section 29 of act number 118, no person is entitled to admission to the prison unless he is convicted of an offense where the punishment shall not be less than six months. Hence, a disorderly person convicted before a justice of the peace, where the sentence could not exceed in any case ninety days, would not come within the class named in section 29.

Act number 118 of 1893, as is indicated by the title, revises and consolidates such laws as may apply to the government and discipline of these several prisons, and section 66 of said act number 118 repeals all acts and parts of acts contravening any of the provisions of said act. That portion of section 1997a1, which allows justices of the peace to send disorderly persons to the State House of Correction and branch of the State Prison in the Upper Peninsula, is inconsistent with and contravenes that portion of section 29 of act number 118, which provides that no persons shall be

received for a misdemeanor where the sentence shall be less than six months.

I therefore conclude that it was the intention of the Legislature to allow only persons whose sentences under the law for misdemeanor should not be less than six months, to be imprisoned in the institution over which you are warden, and that act number 118 of the Public Acts of 1893 repeals so much of section 1997a1 as authorizes justices of the peace to commit disorderly persons to such prison.

There are other reasons appearing in act number 118 which also confirm my belief that it was not the intention of the Legislature to allow short time men convicted of misdemeanors, who are sentenced for only thirty or ninety days, to be imprisoned in the several prisons of the State. Section 62 provides, "That when any convict shall be discharged from prison by parole or otherwise, the warden shall furnish such convict with clothing, if he be not otherwise provided for."

You will observe that the command to the warden to furnish convicts with clothing, is only limited by the clause, "if he be not otherwise provided for," and I do not think it was the intention of the Legislature to allow thirty and ninety day tramps to be confined in the State prisons, and then provide them with clothes on their discharge. Too many of them are "not otherwise provided for."

I am clearly of the opinion that it would be your duty to refuse to accept, under existing laws, any person who is committed to the State House of Correction and branch of the State Prison in the Upper Peninsula by a justice of the peace, as the outside limit for which a justice can commit any person is ninety days.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Taxes—Purchase of State bids—Twenty-five and fifty per cent payments—Construction of statute—Five year clause.*

Under section 136 of the tax law of 1893, a person purchasing lands which were first bought in and owned by the State in 1885, would have to pay fifty per centum of the original taxes assessed from and including the year 1890.

A purchaser of lands which were bid in by the State in the year 1883 (the sales made in 1884 being canceled and included in the sales of 1885) would be required to pay twenty-five per cent of the original taxes assessed, for which the first sale was made, and twenty-five per cent of the original delinquent taxes assessed on the land for each year thereafter, including the year 1890.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, August 9, 1893.*

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor asking my opinion of the construction that should be placed upon section 136 of act number 206 of the Public Acts of 1893, is received and considered.

That section provides that "any person may purchase at any time prior to the first day of January, 1894, any parcel or description of delinquent

tax lands bid in and held by the State for five years prior to the annual tax sale in the year 1890," etc., "by paying not less than fifty per centum of the original taxes assessed thereon; and all lands so held by the State for more than five years, by paying not less than twenty-five per centum of the taxes originally assessed thereon, without any further charges therefor

\* \* \* \* \* that such sale so made shall not be construed to remove or destroy any lien for taxes delinquent on such lands subsequent to the year 1890, but such taxes shall continue a lien, \* \* \*

The money received from sales made under this section shall be divided \* \* \* \* \*

*pro rata* between the township, county and State, as may belong to each \* \* \* \* \*

The Auditor General and the several county treasurers shall cancel on their books all the balance of taxes, charges and interest against the lands so sold."

The records in the Auditor General's office show that the State of Michigan is the owner of certain tax lands, some of which have been purchased and held by the State for upwards of five years, while others have been purchased from year to year, commencing with the year 1885.

Under all of the different tax laws, lands bid off to the State have continued subject to taxation the same as other lands, and hence where the taxes assessed on lands bid off to the State have not been paid, such lands have been sold and bid into the State for such subsequent taxes. In some cases the State owns the lands for all of the consecutive years, none of the taxes having been paid; in other cases only for part of the years within the period.

Each time these lands have been sold for taxes, the interest and expense of the sale have been added to and become a further charge against the lands, and by reason of the accumulation of taxes and expenses, the redemption of the lands held by the State has each year become more and more doubtful.

It was evidently the intention of the Legislature in the passage of section 136 of the tax law of 1893 to, as far as possible, dispose of the delinquent tax lands by permitting persons to purchase of the State prior to the first day of January, 1894, any of the lands held by the State for five years prior to the sale of 1890, at fifty per centum of the original taxes assessed on the land; and that where the lands have been held for more than five years prior to the sale of 1890, by paying twenty-five per centum of the original taxes assessed on the lands.

Five years prior to the annual tax sale in 1890 would carry us back to the sale of 1885, and the section so far as it relates to the periods, should be construed the same as though it read, "any lands bid in and held by the State since the annual tax sale of 1885, may be sold for fifty per centum of the original taxes, and any lands bid in and held by the State for sales taking place prior to the annual tax sale of 1885, may be purchased for twenty-five per centum of the original taxes," etc.

The sale or purchase of all State tax lands in 1884, which were bid into the State, were canceled, and the sale annulled, by reason of the holding of the Supreme Court as to the validity of the tax law of 1882. Hence, at the sale in 1885, lands returned delinquent for taxes in 1881, 1882 and 1883 were sold; therefore, if a person purchased lands which were first bought in and owned by the State in 1885, they would have to pay fifty per centum of the original taxes assessed from and including the year 1881 to and including the year 1890, and the taxes of 1891 and 1892 assessed on such lands would remain a lien upon the lands so sold.

As above stated, the lands bid into the State in 1884 were canceled, and hence, the first lands owned by the State for a period exceeding five years were purchased by the State in 1883 or prior years; and any person who purchases the lands purchased by the State in 1883 or prior years, will have to pay twenty-five per cent of the original taxes assessed for which the first sale was made, and twenty-five per cent of the original delinquent taxes assessed on the land for each year thereafter, including the year 1890.

Probably the reason the Legislature had for dividing the period at the year 1885 is owing to the fact that the sale that year took place under the law of 1885, which was the first sale under any tax law containing the chancery proceedings, which were adjudged valid by the court.

As above stated, the law of 1882 had been declared invalid, and therefore, any lands held by the State prior to 1885 were held under the law of 1869, which did not contain any provision for a hearing in court.

It is clear to me from a reading of section 136 that a person purchasing the lands is to have all the title held by the State, and that no further lien shall exist upon the lands excepting for taxes assessed subsequent to 1890. It is expressly provided, "The Auditor General and the several county treasurers shall cancel on their books all the balance of taxes, charges and interest against the lands so sold;" and further, "that the sale so made and the certificates and deeds so given shall not be construed to remove or destroy any lien for taxes delinquent on such lands subsequent to the year 1890, but such taxes shall continue a lien and the lands shall be sold in all respects as provided by law for each of such subsequent years;" and it is also provided that a person who purchases the interest of the State for fifty per centum or twenty-five per centum, as the case may be, shall be entitled to his deed and certificate, "without any further charges therefor."

The provisions in the law relative to redemptions are somewhat meagre, but I think it was the intention of the Legislature to allow the owner of any lands sold by the State under section 136, the right to redeem such lands at any time within one year from the time of the sale so made by the State; and the owner, in order to redeem the same, must comply with the other provisions of the law of 1893, relative to the redemption of lands.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

---

*Certificate of payment of taxes—Deeds covering same date and description.*

Where deeds all bear the same date and cover the same description of land, it is not necessary to have more than one certificate of payment of taxes.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, August 17, 1893.*

J. R. BENNETT, ESQ., *Adrian, Mich.:*

DEAR SIR—Your favor received.

If your deeds all bear the same date and cover the same description of land, it is necessary to have only one certificate.

When you deliver the first deed to the county treasurer, you would also deliver to him a certificate, showing that all taxes were paid up to the date of that deed, which certificate the county treasurer would file in his office. He would then take notice of the fact that a certificate was on file in his office, showing that the taxes were paid on the same description of land up to the date of each of the other deeds.

While it would be unnecessary in such a case to have more than one certificate, it would be the duty of the register of deeds to note the fact on each deed that a certificate had been furnished, and of course, if he numbered his certificates, the number on each deed would refer to the same number of certificate.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Holidays and half holidays—Protesting notes, etc—Suspension of general laws.*

Under act 185 of the Laws of 1893, notes, bills, etc., falling due on Saturday are protestable on the next succeeding secular day, or on the next legal day on which notes can be protested.

Notes falling due on Sunday, if negotiable and entitled to grace, would be protestable the preceding Saturday forenoon; if non-negotiable and without grace, they would be protestable on the next succeeding or secular business day. (See note.)

When a whole holiday falls on Saturday, paper maturing on that day is payable and protestable on Monday.

When a whole holiday falls upon Saturday, and paper matures on Sunday, if negotiable, the paper is protestable on Friday; if non-negotiable, it would be payable and protestable on Monday. (See note.)

A general law concerning the presentation and protesting of bills of exchange cannot be suspended in its operation by resolution of the board of directors of a bank.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE. }  
*Lansing, August 24, 1893.*

W. H. FOWLER, Esq., *Grand Rapids, Mich.:*

DEAR SIR—In answer to your five remaining propositions, asking for my construction of act No. 77, and act No. 185 of the Public Acts of 1893, for the benefit of the banks of your city, I here repeat your questions and give you my best judgment in relation thereto:

1. "Where a board of directors of a bank pass a resolution to keep open on Saturday, the same hours as any other week day, is the paper that matures on that day (Saturday) due, payable and protestable on Monday or Saturday?"

It is my opinion that the last clause of section 1, of act 185, permitting a bank by a vote of its directors to remain open on Saturday, should not be construed to apply to the presenting for payment or acceptance, and the protesting and giving of notice of dishonor of bills of exchange, bank checks and promissory notes, but should be construed so as to apply to all other legal business which may be transacted by a bank.

I have no doubt but that the provisions of act number 77, of the Public Acts of 1893, are superseded and repealed by act No. 185 of the same

NOTE.—Notes which by their terms fall due on Sunday are presentable for payment and payable on the following Monday.—*Hitchcock vs. Hogan et al.* 57 N. W. 1095 (Mich.).

year, and that all banks should be governed concerning the presentation, protesting, etc., of commercial paper, by said act No. 185. *Thomas vs. Collins*, 58 Mich., 64.

It will be observed that section 1 of said act No. 185 expressly provides that after such act takes effect certain days and "every Saturday, from 12 o'clock noon until 12 o'clock at night, which is hereby designated as a half holiday \* \* \* shall for all purposes whatever, as regards the presenting for payment or acceptance, and of the protesting and giving notice of dishonor of bills of exchange, bank checks and promissory notes, made after this act shall take effect, \* \* \* be treated and considered as the first day of the week, commonly called Sunday, and as public holidays or half holidays."

The law is plainly given complete effect in the State of Michigan as to matters above enumerated, and if the saving clause allowing banks, by resolution of their boards of directors, to keep open Saturday, were to be construed as allowing them to protest notes and checks on that day, it would in effect be allowing the boards of directors to suspend a general law of the State, and no such power can be delegated to a board of bank directors under the constitution of this State. A law once given effect can only be suspended by act of the Legislature; but where a law is suspended by the Legislature, the suspension must be general, and cannot be made for individual cases or for particular localities.

If the Legislature itself could not suspend this law, so as to apply to particular individuals, of course they could not delegate a power they did not themselves possess. The question then arises, what is meant by the language "all such bills, checks and notes otherwise presentable for acceptance or payment on any of the said days shall be deemed to be payable and presentable for acceptance or payment on the secular or business day next succeeding such holiday or half holiday?" That is, to say, do the words, "said days" in the above clause relate back to both the holidays and half holidays, so that notes that would be due on Saturday, ordinarily, would be due and protestable on the secular or business day next succeeding such holiday or half holiday?

It appears to me that the intention of the Legislature was, by using the expression "said days," to include not only the whole holidays, but also the half holidays; otherwise I do not see how any significance whatever can be given to the words "half holidays" in the last above-quoted paragraph, for that paragraph clearly provides that such notes shall be "presentable for acceptance or payment on the secular or business day next succeeding such holiday or half holiday," and if the intention of the law was that notes due on Saturday could be protested on that day, there would be no sense whatever in a provision requiring them to be protested on the next secular day succeeding such half holiday; and inasmuch as the law is well settled that in construing a statute every word and phrase should be presumed to be used to express some idea and to be inserted for some use, I must conclude from the language itself that the intention of the Legislature was that notes which would ordinarily become due on Saturday would, under the new law, be protestable on the next succeeding secular day, or on the next legal day on which notes could be protested.

In this same connection I further observe from an examination of our statute that act No. 185 is a substantial repetition of the statute of New York, excepting as to the time when the notes shall be protested. Their original act was passed in 1887, and contained an express clause that notes

and bills due on any of the said days "shall be deemed to be payable and presentable for payment on the secular or business day next succeeding such holiday; but in case of a half holiday shall be presentable for acceptance or payment at or before 12 o'clock, noon, of that day."

In comparing the above with our statute it will be seen that the words "half holiday" appear in our statute after the word "holiday," and that the entire clause, "but in case of a half holiday shall be presentable for acceptance or payment at or before 12 o'clock, noon, of that day," is entirely omitted. The act creating a half holiday in New Jersey was passed in 1891, and is evidently a copy of the New York law. It contains the same clause which is omitted from our law, "but in case of a half holiday shall be presentable for acceptance or payment at or before 12 o'clock, noon, of that day."

In 1892 Maryland adopted a new statute making a half holiday, and it expressly provided that notes due upon that day should be protested on the next succeeding secular or business day.

I must conclude that the Legislature in adopting act No. 185 intentionally omitted the clause making notes which were due upon a half holiday presentable on that day, and inserted the words "half holiday" after the word "holiday," with the intention of making such notes due and presentable on the following Monday or the next secular or business day.

It will be observed that the law not only relates to notes that might be protested by a bank, but relates to all notes generally, and many notes are protested by persons who are not at all connected with banks.

The time of protest is regulated by the statute and is intended to apply to notes protested by those unconnected with banks as well as notes in the banks of the State, and unless this statute provides that such notes due on Saturday shall be presentable for acceptance and payment on the secular day next succeeding such half holiday, it makes no provision whatever for such notes. It certainly does not provide in any manner that notes due on Saturday may be protested before 12 o'clock, noon, of such day, and it seems clear to me that the Legislature has plainly said that notes due on a half holiday should be protested on the secular day or business day next succeeding such half holiday.

Of course it might be said under the common law that, inasmuch as Saturday afternoon was made a half holiday, notes which would ordinarily become due that afternoon would be due on the forenoon preceding, and of this there could be no doubt had the Legislature said nothing about such half holidays; but it seems to me that the statute, when taken together, clearly provides that notes due on that half holiday shall be protested on the next secular or business day, and that the Legislature did not intend to have such notes come under the common law rule.

2. "Is the paper that matures on Sunday due, payable and protestable on Saturday or Monday?"

The statute makes no provision whatever for notes that become due and payable on Sunday, and does not attempt in any manner to change the general law in that regard, except that one-half of Saturday is deducted from the time on Saturday in which a note could be legally protested on that day.

The rule is that if a bill or note without grace, or a non-commercial instrument for the payment of money, falls due on Sunday or a legal holiday, it is not payable until the next regular business day. The payor is

not compelled by law to pay on the exact day named, and the next day is the first day that the creditor can demand payment.

But if a negotiable note with grace was due on Sunday, then it would be due the Saturday before; if Saturday was a whole holiday, it would fall due upon the Friday preceding. The latest business day, within or before the period of grace, is the day of payment—even though all grace be excluded.

It would seem to me that if the note falls due naturally on Sunday, and the Legislature has provided that Saturday afternoon shall be a half holiday, then the note could be presented for protest at the latest business hour on Saturday, which would be Saturday at noon.

Under the general rule that where the last day of grace is on Sunday (that not being a day on which a note can be protested) the maker must lose that day, it must logically follow that if the Legislature has also provided by law that a note cannot be protested Saturday afternoon, then the maker of a note which would ordinarily be due on Sunday must lose the last day of grace and the last half of Saturday, and that the note should be protested Saturday noon.

3. "When a whole holiday falls upon Saturday, when is the paper maturing on that day payable and protestable?"

On Monday.

4. "When a whole holiday falls upon Saturday, when is the paper that matures on Sunday due, payable and protestable?"

It depends upon the nature of the paper, whether negotiable or non-negotiable; if negotiable, the note would be due, payable and protestable on Friday; if non-negotiable, then it would be due, payable and protestable on Monday.

5. "When a whole holiday falls upon Sunday, and Monday is consequently observed as such holiday, when is the paper maturing on such Sunday due, payable and protestable?"

It does not seem to me that the fact that the statute has declared that when a holiday falls upon Sunday, the next Monday shall be the legal holiday, would at all affect the time of presentation and protest of a note due on such Sunday, as section 2 of act 185 only relates to notes which are due and payable on Monday, when such Monday is a holiday by reason of the original holiday falling on Sunday, and the statute does not refer to or include notes due on Sunday.

I therefore conclude, under the circumstances above stated, that if a note fell due upon Sunday, and Saturday was not a whole holiday, the note would be due and protestable Saturday forenoon. If Saturday was a whole holiday, it would be due, payable and protestable on the next preceding secular or business day.

Permit me to further state that since you presented your questions I have consulted with several bank attorneys, and among them Hon. N. A. Fletcher, of Grand Rapids. Mr. Fletcher does not agree with the above position in relation to the time for the presenting of notes which are due on Saturday, he being of the opinion that such notes are due and presentable Saturday forenoon instead of Monday, as I interpret the statute.

There being some uncertainty about the interpretation that should be given the statute concerning notes due on Saturday, I would respectfully suggest that the papers be protested on each of the days (Saturday and

Monday) until such time as the matter may be brought before the Supreme Court for interpretation.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

---

*Trust companies—Bonds matured by multiple—Lotteries.*

The business of the Union Savings and Trust Company of East Saginaw does not come within the provisions of section 9331 of Howell's Statutes against lotteries, although it may be considered a species of gambling.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, August 25, 1893.*

JOHN A. COMBS, *Attorney, etc., Saginaw, Mich.:*

DEAR SIR—I have examined the question submitted to me by you as to whether or not in my opinion the business of the Union Savings and Trust Company of East Saginaw, Michigan, would come within the provisions of the statutes of this State in regard to lotteries, and after a careful examination of the subject I would say that while I fully believe that the manner of doing business is a species of gambling, and possibly punishable as such, it does not come within the statutes of this State against lotteries.

The statute provides (Section 9331 Howell's Statutes) "that every person who shall set up or promote within this State any lottery or gift enterprise for money, or shall dispose of any property, real or personal, goods, chattels or merchandise, or valuable thing, by the way of lottery or gift enterprise, and every person who shall aid," etc., "shall be punished," etc.

The most comprehensive definition I am able to find of a lottery is that given by the Supreme Court of this State in the case of *The People vs. Elliot*, 74 Mich., 298, as follows: "A lottery is a scheme by which a result is reached by some actions or means taken, and in which result man's choice or will has no part, nor can human reason, foresight, sagacity or design, enable him to know or determine such result until the same has been accomplished."

In the case under consideration the company are engaged in selling bonds. They sell a bond for three dollars. After the bond is sold a monthly deposit of sixty cents for each bond is required. The face of the bond is two hundred and fifty dollars. The three dollars received is paid to the agent. Of the sixty cents that is received each month forty-five cents is placed in what is called the "trust fund," which fund is used for the payment of matured bonds. The agreement also provides for what is called a "reserve fund," and five cents out of each sixty cents is paid into the reserve fund. It is provided that bonds shall mature in their regular numerical order as appears by the number on each bond, commencing with number one; but that in case more than one bond shall be issued to

the same person then such bond shall be at least fifteen numbers apart. It is further provided that if a bond matures in thirty days or less, the amount paid shall be ten dollars; if after thirty days and not more than sixty days, twenty dollars; and that thereafter each bond shall increase in value at the rate of ten dollars per month for a period of twenty-five months, in which case the bond would then be, if matured, worth two hundred and fifty dollars.

It is further provided that at the close of five years after the issuing of a bond any person may stop paying on his bond, and is entitled to take his chances in the regular order for payment upon his bond out of what is called the "reserve fund." If at any time a person holding a bond neglects to make his monthly payment, the bond lapses and the money paid is forfeited.

This scheme upon its face, it seems to me, is an impossible one and is largely on the same theory as the Bohemian oat scheme, the contracts and notes given for which have by our Supreme Court been held absolutely void; but no matter how illegal it may be, that is not the question submitted to this office.

Any person desiring to buy a bond of this company is entitled to receive the lowest number of bond not then issued, and the party is entitled to know, if he so desires, the number of bonds then outstanding, the number of lapses during any given month, on exactly what day the bonds were issued, by whom they are held, the number that have been redeemed, and the cash on hand in the trust fund for the redemption of bonds, together with the date and number of each bond that has been sold. Were it not for the uncertainty as to the persons who will allow their bonds to lapse, and the number of new members that the company will be liable to secure, a person could to a mathematical certainty figure out the possibility or impossibility of this scheme, but with these two uncertainties it is impossible for any person to tell just when his bond will mature; and therefore, not knowing the month, he is unable to tell the amount that he will receive or the amount that he will be required to pay; but none of these things depend upon a lottery or the drawing of any lots; neither can it be said within the definition given in 74 Mich. that the result is reached "by some action or means taken, and in which result man's choice or will has no part." A person who purchases one of these bonds has a definite knowledge at that time of the standing of this company, and can exercise some choice as to the best time for him to purchase. He can also ascertain at the end of each month, or at such other time as he desires, the condition of the company, and whether or not it is best for him to allow his bond to lapse; in other words, he is furnished some data each month on which he can base some judgment of the probabilities or improbabilities of getting more money than he actually paid in. It may be to a large extent an uncertainty, but still it cannot be said that this scheme forms no basis on which to base some judgment. We must remember that not all unlawful schemes come within the definition of a lottery.

In the case of *People vs. Reilly*, 50 Mich., page 384, Justice Campbell reviews carefully the constitutional provisions and the statutes of the State of Michigan relative to lotteries, and in that case, while the court held that the respondent was guilty of a species of gambling, he was not guilty of violating the laws of the State of Michigan against lotteries.

The offense for which the respondent was in that case convicted was

what is commonly known as pool selling. The pools were made up of amounts bid for the privilege of selling horses out of those running in a race, and of bids of as many as saw fit to bid, and by purchasing checks deposited on base ball matches, where those who bid on the winning combination received the pool. The court said: "That this is a species of gambling is clear enough, but whether it amounts to keeping a lottery is a very different thing. The term used in the charter is the same used in the criminal law of the State, and was undoubtedly used, as the other charter language was used, in a similar sense. It is a safe and necessary rule to construe criminal statutes so as to include what is fairly and reasonably within the legitimate scope of the language, but not to include what is not within the language, merely because it partakes of similar mischievous qualities. The legislative authority very frequently makes large differences between the punishment of wrongs involving many resemblances in quality, because the extent of the mischief is greater, and the depravity more serious than in others. And while all kinds of gambling belong morally to one family, the discrimination between the several kinds is so great that courts cannot justly confound them by construction."

The court further says: "By the constitution of 1835 (Art. 12, Sec. 6) it was provided that 'no lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.' There can be no doubt what was meant by this language, and it clearly referred to the class of enterprises which had formerly been lawful if authorized by law, and criminal if unauthorized. The statute of 1828 covered all such cases adequately, and remained unchanged until the Revised Statutes of 1838, which introduced the sections now in force, and which has only been once amended, in 1867. Rev. Stat. 650. This section covered originally two classes of offenses: First, lotteries as usually understood, with tickets written or printed, or some equivalent device securing shares in a distribution of prizes; and second, distribution by raffling. The penalty was unchanged. The reviser, both in his head notes and in his index, retained the old idea of "illegal" lotteries, as simply prohibited offenses as against public policy. In the revision of 1846 (p. 685), the section of 1838 was retained without variation. And in the subsequent compilations it is noticeable that this offense is classed in the same category with illegal banking and fraudulent stock issues, both of which are usually committed in such a way as to involve large amounts and numerous persons defrauded.

"No one can compare the legislation of the State without seeing that the Legislature has found it desirable to deal with lotteries differently as well as more severely than with other gambling transactions.

"It is not safe to extend these serious consequences by construction to cases which are not fairly within the language of the constitution and statutes, especially as the Legislature has made provision for much lighter punishment in those cases of gambling which are more confined in their action, and therefore less likely to do mischief on a large scale."

The manner of selling bonds on speculation and uncertainties described in this case, was not in vogue at the time our statutes were adopted relative to lotteries, and the language used is so definite and was so well understood at that time, that it certainly cannot be said the Legislature intended to include something then unknown. In the line of gambling I find two cases somewhat similar in point of fact, and it would seem to me more liable to come under the head of lotteries than the cases

under consideration. They are the cases of *ex parte* Schobert, 70 Cal., 632; and *Kohn vs. Koehler*, 96 N. Y., 362. In these cases bonds were issued and the number of bonds that were to be paid in each year were to be determined by lot. The holders of the bonds, bearing the first forty numbers, were to be paid premiums. It was held in both cases that such transactions did not come within the definition of lotteries.

I have carefully investigated the law, and I must confess with a great deal of prejudice against the business described herein, and yet I have been forced to come to the conclusion that it does not come within the statute of the State of Michigan concerning lotteries.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

---

*Contracts by public officers—Private interest—Mandatory statutes.*

The object of section 9355 of Howell's Statutes is to protect the public interests, and must be construed as mandatory, and contracts with persons, who are at the time such contracts are made, members of boards having charge of the penal institutions of the State, and who are directly or indirectly interested in such contracts, are absolutely null and void, and not voidable merely.

This rule does not apply to contracts made before a person becomes a member of the board.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, August 26, 1893.*

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your inquiry as to whether or not section 9355 of Howell's Statutes applies to the members of the several boards having charge of the penal institutions of this State to such an extent as to render contracts, purchases and sales, made for and on account of such institutions, after such persons have become members of such boards, and in which such members are directly or indirectly interested, null and void, is received and considered.

Where the statute declares any contract, purchase or sale null and void, if the object of the statute is to protect some person, the language is usually construed as being void or voidable, at the election of the person himself; but where the object of the statute is to protect the public interests, and any contract, purchase or sale is declared null and void as a matter of public policy, the language is construed to be mandatory.

*Beecher vs. Marq. & Pacific R. M. Co.*, 45 Mich., 103.  
*Green vs. Kent*, 13 Mass., 515.  
*Rex vs. Hipswell*, 8 B. & C., 466, 470.  
*State vs. Richmond*, 26 N. H., 232.

The object of section 9355 of Howell's Statutes is evidently to protect the public interests and for public policy, and I am therefore of the opinion that the language used should be construed as mandatory, and that the

contracts, purchases and sales with persons, who are at the time such contracts, sales or purchases are made, members of such boards, are absolutely null and void.

I do not think the statutes could be extended by construction to apply to existing contracts of sale or purchases which were in force at the time any person might be appointed a member of a board, so as to render such contract void or illegal. The statute does not so provide, and as it is penal, its provisions should not be extended by construction. The rule is well settled in this State that penal statutes cannot be enlarged by intendment, and acts not expressly forbidden by them cannot be reached merely because they resemble the offenses provided against or are equally and in the same way demoralizing or injurious.

Shaw vs. Clark, 49 Mich., 384.  
 People vs. Reilly, 50 Mich., 384.  
 Van Buren vs. Wylie, 56 Mich., 501.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

---

*Sale of lands for taxes in disregard of State's title.*

Where a parcel of land is sold from the delinquent tax list in disregard of the titles held by the State under sales of prior years, the sale would be absolutely null and void and not voidable merely, and the purchaser could not claim any right to purchase the prior years from the Auditor General, and the Auditor General would be under no more obligation to sell to him than to any other person.

STATE OF MICHIGAN,  
 ATTORNEY GENERAL'S OFFICE. }  
*Lansing, August 26, 1893.*

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor asking for my written opinion in the following case, received: "A parcel of land was sold at the annual tax sale of May, 1893, from the delinquent tax land list, and not sold from the State list. Can the purchaser now claim the right to purchase the prior years from the Auditor General for the amount due on the day of sale?"

Your question assumes, as I understand it, that the lands sold in May, 1893, had been, in prior years, bid off to the State, and that at the time of the sale in 1893, the State held the same as State tax lands, and that the county treasurer sold the lands for the delinquent taxes without requiring the purchaser to at that time become the purchaser from the State tax land list.

Your question calls for a construction of a clause of section 70 of act number 206, of the Public Acts of 1893, relating to this matter, and section 80 of the same law. The clause in section 70, among other things, provides: "If any parcel sold under the provisions of this section" (said section relates to the sale of delinquent tax lands) "shall also be offered at the same sale as State tax lands, the purchaser must also, at

the same time, become the purchaser from the State tax land list, and pay the taxes, interest and charges remaining unpaid thereon, and must pay all the remaining taxes assessed for the year for which he purchased, with interest thereon. All sales made in contravention of this requirement shall be void."

Section 80 reads as follows: "In all cases where a description of land is offered as State or county tax land, and the same description or any part thereof shall be offered in the list of lands delinquent for taxes, as provided in this act, the county treasurer shall inform the person bidding of that fact, and such person shall be required to purchase said description at the same time, and if he refuses so to do, the treasurer shall refuse his bid, and shall again offer it as if no bid had been made thereon."

It will thus be seen that the law does not contemplate any sale whatever, to any party, other than the State, of any delinquent tax lands, unless the purchaser at the same time buys all of the interest then held by the State; and, as above quoted, it is provided in section 70 that "all sales made in contravention of this requirement shall be void."

The only question that could be raised would be, did the Legislature mean, when they declared that all sales under such circumstances should be void, that the word "void" in that connection should be given a literal interpretation, or did they mean simply that the sale should be voidable at the option of the Auditor General or the county treasurer.

The general rule is that where a statute declares any purchase or sale null and void, if the object of the statute is to protect some person, the language is usually construed as being void or voidable at the election of the person himself; but where the object of the statute is to protect the public interests, and any purchase or sale is declared void as a matter of public policy or interest, the language is construed to be mandatory.

*Beecher vs. Marq. & Pac. R. M. Co.*, 45 Mich., 103.

*Green vs. Kent*, 13 Mass., 515.

*Rex vs. Hipswell*, 8 B. & C., 466, 470.

*State vs. Richmond*, 26 N. H., 232.

The evident object of the clause in section 70, declaring such sale void, is to protect the public interests and a statement of public policy. I am therefore of the opinion that the language used should be construed as mandatory, and that a sale made by a county treasurer in disregard of this language would be absolutely void.

It would therefore follow that a purchaser at the delinquent tax sale in 1893, who purchased delinquent lands in disregard of the titles held by the State under sales of prior years, would acquire no right, title or interest by his purchase, and he would have no legal right to require a deed, nor would the Auditor General be under any more obligations to sell him the right or interest acquired by the State in prior years than he would to sell the same lands to any other individual.

Respectfully submitted,

A. A. ELLIS,

Attorney General.

*Township treasurer—Liability for funds of township—Bank failure.*

A township treasurer is liable to the township for funds of the township which he deposits in a bank which afterwards becomes insolvent.

STATE OF MICHIGAN, }  
 ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Sept. 2, 1893.*

WILSON MANN, *Township Treasurer, Harbor Springs, Mich.:*

DEAR SIR—Your favor requesting my opinion as to your liability to the township of which you are treasurer, for moneys of said township deposited by you, in good faith, in a bank which afterwards became insolvent, is received.

Secton 752 of Howell's Statutes provides that each township treasurer shall give a bond "conditioned for the faithful discharge of the duties of his office, and that he will faithfully and truly account for and pay over according to law, all moneys which shall come into his hands as such treasurer."

There is no statute requiring or authorizing a township treasurer to make deposit of township moneys in any particular place or with any particular person. He is consequently left to deposit such money in any place he may choose.

In determining the extent of the liability of a township treasurer for township moneys received by him, regard must be had to the provisions of the statutes, and the bond required to secure the faithful performance of his duty.

Under the express conditions of the bond he is required to "account for and pay over all moneys which shall come into his hands as such treasurer." No proviso or exception is made here concerning unavoidable losses through bank failures or otherwise.

In the case of *Perley vs. Muskegon*, 32 Mich., 132, a very full and thorough consideration of this question was had by our Supreme Court, and the conclusion reached that, inasmuch as the statute did not require or authorize the county treasurer to make deposits in any particular place, he was responsible as debtor, and not merely bailee, for the county funds that came into his hands, and his liability was absolute and not affected by unavoidable loss or accident.

According to the great majority of the decisions the officer is not regarded as a mere bailee, but as one who, by the terms of his undertaking, has incurred a fixed and absolute liability to keep the money safely at all hazards.

*Muzzy vs. Shattuck*, 1 Denio, 233.  
*Hancock vs. Hazard*, 12 Cush., 112.  
*Egremont vs. Benjamin*, 125 Mass., 19.  
*Halbert vs. State*, 22 Ind., 125.  
*Morbeck vs. State*, 28 Ind., 86.  
*Rock vs. Stinger*, 36 Ind., 346.  
*Board of Justices vs. Fennimore, Cox* (N. J.) 242.  
*New Providence vs. McEachron*, 33 N. J. L., 339.

Bearing more particularly upon the question here presented are the authorities holding that a township or county treasurer, or other receiver of public moneys, is not discharged from liability by the failure of a bank

in which he had deposited the funds, though he was guilty of no negligence in ascertaining its financial condition.

State vs. Moore, 74 Mo., 413.

State vs. Powell, 67 Mo., 395.

Wilson vs. Wichita County, 67 Tex., 647.

Ward vs. School District, 10 Neb., 293.

This rule, without any doubt, frequently works great hardship to honest but unfortunate officials, but public policy would seem to require that treasurers or other receiving officers be held to a very strict accountability of public moneys. Any relaxation of this rule would open a door to all manner of frauds, which might be practiced with impunity.

United States vs. Prescott, 3 How., 578.

I am of the opinion, therefore, that as township treasurer, you would be liable to the township for moneys belonging to said township, which were deposited by you in a bank which afterwards became insolvent, even though such deposit were made in good faith, and you were guilty of no negligence in ascertaining the financial condition of the bank.

Respectfully submitted,

A. A. ELLIS,

*Attorney General.*

*Insane asylums—Support of patients—State charges—Computation of time.*

When a patient is admitted to an asylum from one county and is discharged, and is afterwards admitted from another county, the time which was spent in the asylum under the first confinement cannot be reckoned in determining the liability of the State for the support of such patient under the statute making the State liable after support by the county for two years.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, September 6, 1893. }

C. B. BURR, *Medical Supt. Eastern Michigan Asylum, Pontiac, Mich.:*

DEAR SIR—Your favor stating that Mary A. Smith was first admitted to the asylum from Saginaw county, July 2, 1891; that she was discharged December 24, 1891; that her second admission was from Lapeer county, August 20, 1892, and asking: "In reckoning up the two years treatment at county expense, should the time spent in the asylum at the expense of Saginaw county be considered" is received and considered.

Your question requires an interpretation of section 1930c8 of Howell's Statutes; so much of that section as relates to this matter reads as follows: "At the close of each quarter the medical superintendent of the asylums shall certify to the Secretary of State, the name, age and residence of all patients under treatment, the expense of whose maintenance shall have been wholly paid by any county for *the two preceding years*, and such patients shall, from and after the close of said period of two years, be maintained by the State until restored, or so long as shall be deemed necessary by the board of trustees."

It appears to me that the language clearly contemplates that the period shall be the two years next preceding the quarter at the close of which the statement is made, and that the language "any county" only refers to the county which has maintained the patient for the said two years then next preceding the said quarter.

There is no provision in the statute authorizing or directing the superintendent to credit one county for the care and maintenance of a patient by another county, under the circumstances mentioned in your letter.

The liability of the State is wholly statutory, and I do not believe that the superintendent would have any right to add the two periods together.

I should, therefore, give it as my opinion that the patient should be maintained for two years by Lapeer county, from August 20, 1892, before such patient would become a State charge.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*School elections—Voting by proxy—Majority necessary to elect.*

School officers are required by law to be elected by ballot, and a school district meeting cannot direct its secretary to cast a vote for officers in its place and stead. A majority is necessary to the election of school officers.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Sept. 6, 1893.*

JAMES SCHERMERHORN, Esq., *Hudson, Mich.:*

DEAR SIR—Your favor of September 5, stating that at the annual school meeting of the public schools of Hudson, two members of the school board were reelected by the secretary casting the votes of the taxpayers for them. This without any informal vote or ballot of any kind, and asking, "Will you kindly advise me whether such an election is legal?" is received and considered.

Under the school law (see section one of chapter three and section one of chapter ten) the election of all school officers must be by ballot, and it is especially provided in section one of chapter ten that "in the election of trustees and all other school officers, the person receiving a majority of all the votes shall be declared elected."

The statute not only expressly provides that the election shall be by ballot, and declares the number of votes required in order to elect, but the statute also provides who shall be electors. (See section 17 of chapter one.)

It is not only the theory, but it is the plain provision of the school law, that school officers must be elected by the qualified electors of the district. There is no provision whatever allowing any person to vote by proxy.

I am of the opinion that in order to have a legal election in a school district, the statute must be substantially followed. In the case of *Cleveland vs. Amy*, 88 Mich., 375, two members of the school board, Chipman

and Durham, claimed to be elected by a plurality vote. The old officers disputed the legality of the election and continued to hold office. The Supreme Court said: "Chipman and Durham did not receive a majority of all the votes cast. There was, therefore, no election, and the old officers held over."

If the ballot had been ordered for the election of trustees and only one vote had been cast, of course that would have been a majority of all of the votes cast, and the party receiving that one vote would legally be entitled to the office.

But as I understand your letter, the secretary did not attempt to vote for himself, but to vote for the electors present, and if the electors had a right to instruct him *viva voce* or otherwise, to vote for them, they would have had just as good a right to elect the trustees without any ballot whatever, and certainly the statute will not support any such interpretation.

In this case as you state it, it is my opinion that the two trustees are legal officers of the district, not by reason of the fact that the secretary voted for them, but by reason of the fact that there being no legal election they are entitled to hold over until their successors are legally elected and qualified.

Respectfully,

A. A. ELLIS,

*Attorney General.*

---

*School elections—Qualified voters—Registration—Statutory construction.*

Act 138 of the laws of 1893 does not affect in any manner the right of women to vote at school elections held under the general law.\*

Under the general school law there are two classes of persons who are entitled to vote: First, taxpayers; second, guardians or parents of children included in the school census. Hence, a person, whether male or female, who is over twenty-one years of age, but who is neither liable to pay a tax, nor a guardian or parent of children included in the school census, is not entitled to vote.

Registration is not required at school elections.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Sept. 7, 1893.*

CHARLES D. BARGHOORN, ESQ., *Prosecuting Attorney, Luther, Mich.:*

DEAR SIR—Your favor of September 5, stating that at your late school election, two women over twenty-one years of age, offered to vote, and that their votes were challenged and refused for the reason that they had not been registered. One of them was the mother of children included in the school census; the other was neither mother nor guardian, and that neither were taxpayers; and asking whether or not, in my opinion, these women were entitled to vote, is received and considered.

In reply would say that if your school district is organized under special

---

\*Act 138 of the laws of 1893 was held unconstitutional by the Supreme Court in *Coffin vs. Election Commissioners*, 97 Mich. 188.

act, it would be impossible for me to give an opinion as to the rights of women to vote, unless my attention was called to the particular act.

If your district is organized under the general school law, act number 138 (being the woman's suffrage act of 1893) would not affect in the least the right of women to vote.

Act number 138 of the Public Acts of 1893 simply attempts to place women upon the same footing as men; but its object was not to abridge the right of women to vote at school meetings, nor to extend to them any right not possessed by the male citizens of the district.

Under the general school law, there are two classes of persons who are entitled to vote. The first are taxpayers; the second, guardians or parents of children included in the school census.

Under the general school law, a male citizen who is over twenty-one years of age and resides in a school district, but who is neither a taxpayer nor a parent or guardian, would not be entitled to vote; and as women are placed simply upon the same basis as men, act number 138 would not extend to a woman who was neither a parent, guardian nor taxpayer, the right to vote at a school meeting held under the general law.

The school law requires no registration whatever, and act number 138 does not provide that any registration shall be had at elections where none is provided for by the law under which the election is held. The fact, therefore, that the women were not registered, would not prohibit their voting, if the election was held under the general school law. The woman who was the parent of children included in the school census is legally entitled to vote, and the woman who is neither a taxpayer, guardian nor mother of children included in the school census, would not be entitled to vote.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Liquor taxes—Delinquent school funds—County treasurer—Agent of township.*

A county treasurer, in collecting liquor taxes, acts as the agent of the township, and he cannot withhold from the township its portion of the liquor taxes collected, for the purpose of reimbursing the county for State and county taxes retained by the township treasurer to fill the delinquent school fund.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Sept. 7, 1893.*

S. D. SHAFFNER, *County Treasurer, Midland, Mich.:*

DEAR SIR—Your favor of September 5, asking for my opinion as to whether the county treasurer can retain liquor money due the city of Midland for delinquent school taxes of 1892, is received and considered.

In reply would say, section 9 of the general liquor law requires that one-half of all the moneys paid to the county treasurer under the provisions of said act, after deducting his fees, etc., shall be by him placed to the credit of the township, village or city from which the same was collected, and shall be by such county treasurer paid over on demand to the treasurer of such township, village or city.

So far as collecting that portion of the taxes belonging to the township is concerned, the county treasurer acts as the agent of the township and not of the county. The money thus collected by him for the township does not go into the county treasury at all, but constitutes a separate fund, with which the county has nothing whatever to do. The treasurer accounts directly to the municipalities for such moneys, and it is his duty to pay them over to the township treasurer on demand.

A similar case was before the Supreme Court in 1882 under the liquor law of 1875. The provisions of the section of that law relative to the collection and paying over of the money, so far as apply to the question by you submitted, are very similar to the law of 1887, under which you now collect the taxes.

In that case the county treasurer sought by *mandamus* to compel the city treasurer to pay over money collected by him for county taxes, and the city treasurer defended on the ground that the county treasurer had not paid over to the township the liquor moneys by him collected.

The court held that the county treasurer in collecting liquor moneys was the agent of the township, not of the county; that the neglect of the county treasurer was not a neglect of duty that he owed the county, but a duty that he owed the city, and that the city was not entitled to the set-off. (See *Marquette vs. Ishpeming Treasurer*, 49 Mich., 244.)

I have no doubt that the converse of the proposition would hold true, and that the county treasurer, when acting for the township in collecting these moneys, cannot retain the money collected by him, because there is money due the county from the township.

The money that the county treasurer would seek to hold is not in fact in the county treasury, but is simply a fund in his hands as agent for the township, and he has no right to misappropriate it or pay it over to the county for the county's use. He must at his peril pay it over to the township as the law requires.

For the reasons above stated, it is my opinion that the county treasurer has no right to retain liquor moneys due to the city of Midland for the purpose of reimbursing the county for delinquent school taxes of 1892, retained by the treasurer of such township.

Respectfully submitted,

A. A. ELLIS,  
Attorney General.

---

*Appointment to office—Members of the Legislature—Employment by State authority—  
What is "State authority."*

Any appointment or employment by the Governor, or any State board, of members of the Legislature, in carrying out the provisions of any act passed by the Legislature, is prohibited by section 18, article 4 of the constitution.

"State authority," as used in the above section, is construed to include State boards appointed by the Governor.

The prohibition of the constitution concerning contracts with members of the Legislature, not only extends during the whole period for which the member was elected, namely, two years; but also "for one year thereafter."

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, Sept. 7, 1893.*

HON. JOHN T. RICH, *Governor, Lansing, Mich.:*

DEAR SIR—Your favor of September 7, asking for my opinion as to the legality of the appointment or employment by the Governor or any State board, of members of the Legislature, in carrying out the provisions of any act passed by the Legislature of 1893, and stating that there are three cases now pending where this question is involved, is received and considered.

Section 18 of article 4 of the constitution of this State provides: "No person elected a member of the Legislature shall receive any civil appointment within this State, or to the Senate of the United States, from the Governor, the Governor and Senate, from the Legislature, or any other State authority, during the term for which he is elected. All such appointments, and all votes given for any person so elected for any such office or appointment, shall be void. No member of the Legislature shall be interested, directly or indirectly, in any contract with the State or any county thereof, authorized by any law passed during the time for which he is elected, nor for one year thereafter."

The object of this provision of the constitution is to prevent officers from using their official position in the creation of offices, or for the supplying of labor or employment for themselves, or for the appointment or employment of themselves.

The first part of section 18 above quoted, so far as it relates to the appointment of members of the Legislature or those who may have resigned after their election, during the two years for which they were elected, was substantially passed upon by the Supreme Court of this State in the June term of 1891, in the case of *Ellis vs. Lennon*, 86 Mich., p. 468, and in that case it was held that the time to which the prohibition extended was the full period for which the election was had, whether the officer had resigned or not at the time the appointment was made, and that all such appointments were illegal; and it was stated that the purpose of such provision was "to prevent officers from using their official position in the creation of offices for themselves, or for the appointment of themselves to place."

The question as to what was meant by "State authority," and the latter part of the above quoted paragraph relative to being interested directly or indirectly in any contract, etc., was not before the court.

The question as to the appointment by the Governor is answered by the plain provisions of the constitution, and such appointments are prohibited; and I am of the opinion that an appointment made by a board appointed by the Governor, or by virtue of a statute of the State, and who are authorized to make appointments for the interest of the State, would be an appointment by State authority, and would come within the prohibitions of the statute, and that therefore an appointment to a position, either by the Governor or any State board, of a member of the Legislature, to carry out the provisions of any act passed by the Legislature of 1893, would be in violation of the constitution of the State.

It will be observed that the prohibition against being interested, directly or indirectly, in any contract with the State, authorized by any law passed during the time for which the member of the Legislature was elected,

not only extends during the entire time for which the election was had, but "for one year thereafter."

The object of this section, as already indicated, is that a member of the Legislature shall not be interested in providing employment, or State contracts, in which he himself might be directly or indirectly interested, and the people, by the constitution, have seen fit not only to prohibit his employment during the time for which he was elected, but for one year after the period of his election has expired. These prohibitions are placed in the constitution as a matter of public policy.

Any employment of a member of the Legislature, whether by the Governor or any State board, or by any other person, for the purpose of carrying out or performing any contract authorized or required by a law passed during the time for which such member of the Legislature was elected, is clearly prohibited.

It seems clear to me that if any work or employment is required by virtue of any law passed by the Legislature of 1893, the Governor and the State boards would have no right legally to employ any member of the Legislature of 1893 for the purpose of performing any such work or employment, until after one year from the first day of January, 1895.

Respectfully submitted,

A. A. ELLIS,

*Attorney General.*

---

*Labor inspectors—Compensation and expenses—Hiring of offices and office furniture.*

The appropriation provided in section 6, of act 126. Laws of 1893, for the compensation and expenses of labor inspectors, is all that may be used for the compensation of inspectors and their expenses. Their expenses should be audited by the Board of State Auditors.

The *per diem* compensation, provided for in said act, only includes actual services, and would not allow inspectors to draw pay for Sundays, unless they actually serve the State on Sundays.

The Board of State Auditors are not authorized to expend anything outside of said appropriation for hiring offices or purchasing furniture for same.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE. }  
*Lansing, September 7, 1893.*

HON. CHARLES H. MORSE, *Commissioner of Labor, Lansing, Mich.:*

DEAR SIR—Your favor of September 5, calling my attention to the factory inspection law passed by the Legislature of 1893, and stating, "Sections 6 and 16 seem to conflict. It is desirable to pay the expenses of inspectors without reference to the Board of Auditors, keeping within the limits of the appropriation. \* \* \* Taking both sections into consideration, can this be done?"

"Section 6 also fixes the salary of inspectors. As a rule, the other employes of the State, who are paid by the day, count all the days in the month. Should inspectors be paid that way, or only for week days?"

"In cities like Detroit and Grand Rapids it is necessary that an inspector should have an office. Taking the first proviso of section 6 into consideration, would the Board of Auditors have authority to provide necessary office and office furniture?" is received.

In reply to your first question would say, the expenses of all State officers are audited, unless otherwise especially provided, by the Board of State Auditors; hence, so far as sections 6 and 16 are concerned, there can be no conflict, as in both cases all expenses, whether for traveling or otherwise, will necessarily have to be audited by the Board of State Auditors.

The usual way is to audit such accounts monthly; hence, the other provisions of section 16 are in harmony with the provisions of section 6, relative to the payment of expenses.

The provisions for the appropriations under act No. 126 are rather meagre. Section 6, however, provides in substance that a sum not to exceed four thousand dollars may be expended. I am therefore of the opinion that section 6 should be construed in connection with section 16, and should be held to be both an appropriation of four thousand dollars, and a limit to the entire amount, including traveling fees, that may be used for the purpose of inspectors and their expenses; and that all expenses, outside of the compensation of the inspectors, should be audited by the Board of State Auditors.

To your second interrogatory, relative to the payment of inspectors under the act, I would say, the act provides that the person appointed by the Commissioner of Labor "shall receive such compensation as shall be fixed by the Commissioner of Labor, not to exceed three dollars per day. \* \* \* All compensation for services provided for in this act shall be audited and paid in the same manner as salaries \* \* \* of the other State officers."

It would appear from the above that the compensation in this case is for the services rendered, and the limit for the amount that may be paid is fixed at not to exceed three dollars per day. This certainly must be construed to relate to three dollars a day for the time spent in serving the State.

No work, excepting works of necessity and charity, can be performed on the Sabbath under the statutes of the State, and I am of the opinion that the intention of the statute was to limit the commissioner to the payment of not exceeding three dollars per day for the time actually spent in the service of the State. If it was necessary, in order to carry out the provisions of the act, to work upon the Sabbath, I think the commissioner would be authorized to pay for such services at the rate stated; otherwise, not.

In reply to your third question, I do not believe that the Board of State Auditors would be authorized, under the law, to expend or cause to be expended, any sum outside of the appropriation of four thousand dollars for the hiring of offices or the providing of office furniture.

It seems to me that the law clearly limits the amount that can be expended for all purposes to four thousand dollars.

Respectfully submitted,

A. A. ELLIS,  
Attorney General.

*Good time of prisoners—Computation—Retroactive statutes—Statutory construction  
—Vested rights of prisoners—Constitutional law—Sentences—Record of  
previous sentences.*

Act 118, Laws of 1893, making slight changes in the amount of good time that can be earned by prisoners, confined in the prisons of the State, and making radical changes in cases of second sentences, and applying to all prisoners, whether confined in the prison or sentenced at the time the law took effect, and making provision that the computation of good time should be made on the basis of the old law until said act took effect, for all prisoners then confined in the prison, and then on the basis of the new law, is not retroactive and does not deprive a prisoner of any rights which he had under the constitution.\*

A prisoner has no vested right in good time which the statute allows him to earn, as such statute is merely a legislative declaration of prison rules, and is no part of the sentence.\*

The law requiring a record to be kept of the description of each prisoner, furnishes data from which can be obtained the facts as to whether a prisoner has ever been sentenced before, and this is *prima facie* sufficient.

Law providing for letting of contracts still in force.†

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, September 9, 1893. }

*Hon. William Chamberlain, Warden Michigan State Prison, Jackson, Mich.:*

DEAR SIR—Your favor asking my opinion relative to the construction that should be placed upon section 33 of act number 118 of the Public Acts of 1893, concerning the computation of good time for convicts now confined in the State Prison at Jackson, and asking particularly whether it would be necessary to make up new registers and a recomputation allowing each prisoner the good time already earned under the old law, and computing thereafter upon the basis provided for in the new act, and also suggesting that by reason of the small change in the time, no actual change in the granting of good time was actually intended in the case of first offenders; with the further suggestion that the question has been raised as to whether by making a recomputation, the law is not made retroactive and unjust to the prisoners who had been sentenced when different conditions were in force, etc.; also calling my attention to section 9706 of Howell's Statutes, relative to the manufacture of articles for State institutions, and asking whether section 9706 of Howell's Statutes, authorizing the board of prison inspectors to advertise for bids for convict labor, is in my opinion still in force, is received and considered.

The changes in law, as suggested in your letter in the case of first offenses are very meagre, and I am unable to comprehend the reasons that moved the Legislature in making these changes; but the change is plainly made, and it is expressly provided that "The warden, in computing the diminution of time for those convicts now in prison, shall allow them the good time made up to the time this act takes effect, in accordance with the provisions of law previously in force, and thereafter it shall be computed in accordance with the provisions of this section."

While the changes in the case of a first offense are very meagre, the changes made in cases of second or subsequent offenses are radical. The law further provides that "A convict who shall be serving a second term in

\* Held by the Supreme Court in *re Charles Canfield*, 98 Mich., 644, that a prisoner has a vested right in the law in force at the time of sentence granting him a right to earn good time, and that the statute, so far as it applied to persons in prison or sentenced at the time the law took effect, was void.

† See *Ellis vs. Parsell*, 58 N. W. Rep. 889.

said prison shall be allowed for the several periods in order above named, two, three, four, five, six, seven and eight days, as good time, and no more; and if any convict has already served a second term in said prison, he shall be allowed no good time, but shall be held until the full completion of his sentence."

It will be observed that the statute divides up the time into seven periods: The first period includes the first and second years of the sentence; the second period the third and fourth years; the third, the fifth and sixth years; the fourth, the sixth, seventh, eighth and ninth years; the fifth, the tenth to the fourteenth years inclusive; the sixth, the fifteenth to the nineteenth years inclusive, and the seventh, the twentieth and subsequent years.

A literal construction of the language used by the Legislature would only entitle a convict who was serving a second term to two days for the first two years, three days for the third and fourth years, etc., as the periods provided by the statutes are not divided into months, but into groups of years. It is my opinion, however, that the Legislature did not mean just what they have said, but intended to say, "A convict who shall be serving a second term in said prison shall be allowed for (each month of) the several periods in order named above, two, three, four, etc. You will observe that I have inserted in the above quotation the words "each month of," which I am constrained to believe were unintentionally omitted by the Legislature, or in other words, I think the Legislature intended that it should read the same as though those words were inserted. I reach this conclusion from the fact that the same section provides: "The warden shall cause a record to be kept of each and all infractions of the rules of discipline by convicts, with the names of the persons so confined, and the date and character of each offense, which record shall be placed before the board at each regular meeting thereof, and every convict who shall have no infractions of the rules of the prison or the laws of the State recorded against him, shall be entitled to a reduction from his sentence as follows, etc."

Section twenty-three provides that the board of control shall meet at least once in each month, and clearly section 33 contemplates that the report shall be made and acted upon at each monthly meeting, and if a convict who is serving a second term was only entitled to two days for the entire period fixed by the statute, instead of two days for each month of the period, he would not be entitled to any credit until the close of such period.

The general rule is that a statute should be so construed that the intention of the Legislature will be expressed. The intention of the Legislature, if it can be ascertained, should govern in all cases, although the construction may do violence to the plain language of the statute.

It is said that "what is within the intention of the Legislature is within the statute, although not within the letter; and what is within the letter, but not within the intention, is not within the statute."

*Mayor vs. Root*, 8 Md., 95.

*State vs. Boyd*, 2 Gill. & J., 374.

*Woodruff vs. State*, 3 Ark., 285.

*Sutherland on Statutory Construction*, section 411.

It will be seen, even with this construction, that a person who is serving a sentence for ten years under the new law, instead of being able to gain

585 days during the period of his sentence as under the old law, could now only gain 478 days, or a difference of over 400 days on a ten year sentence; and a person who has already served a second term, and is serving a third term or any subsequent term, would be deprived entirely of any good time. I can hardly think that the Legislature intended to make any more radical change.

As the law clearly provides that after the act takes effect the good time of those now in prison shall be computed according to the rate provided in said section 33, the only question presented would be as to the validity of the section, or in other words, the right of the Legislature to change the law after a person has been sentenced, when the statute provided for a different rate of good time in case of good behavior.

Our statute relative to good time has been changed a number of times since the organization of the State Prison at Jackson, but in every case until the present change, the good time has been enlarged, and hence, the question as to the rights of the prisoner under this particular clause in the statute has never been before our Supreme Court. The court, however, in two cases have had occasion to consider our statutes relative to good time, and have held the statutes valid.

As suggested in your letter, it might be claimed that when the party was sentenced, the good time that he was entitled to, in case of good behavior, was taken into consideration, and that he had a vested right in the provisions of this statute.

However, I do not see how the courts could sustain such a holding. The sentences pronounced by the several circuit judges and others who have committed persons to the State Prison, were pronounced under laws especially providing for the punishment of the offenses committed. The object of such statutes was entirely different from the one under consideration. In the case *in re William Walsh*, 87 Mich., 467, the Supreme Court in speaking of the statute of this State authorizing good time, said: "Its apparent object is to stimulate the prisoners to good behavior, by hope of reward in the shortening of their terms of confinement." In other words, as I understand the holding, this statute is passed as a part of the prison discipline of the State. They have a similar statute in the State of Massachusetts, and in *Colon's case*, 148 Mass., 186, a claim was made on the part of the prisoner that he had a vested right in the statute relative to deductions from the term of imprisonment, for good conduct, and hence, he could not be removed to the Massachusetts Reformatory from another prison; the court held that the prisoner had no vested rights under that statute, among other things, for the reason of the uncertainty of the statute, and the fact that it was left within the power of the board to deduct all good time for infractions of prison rules. Their statute is very similar to the one under consideration, and it will be noticed that among other things provided for in section 33 is the following: "The board may by general rule, subject to amendment from time to time, prescribe how much of the good time earned under the foregoing provisions, a convict shall forfeit for more than one infraction of the prison rules in any month, and for any serious act of insubordination, attempt to escape, or escape, the board may, by special order, take away any portion or the whole of the good time made by any convict up to the date of such offense."

A similar provision was contained in the old law. It will be thus seen that it is left absolutely within the power of the board, by order, to take

away the whole of the good time earned by any convict up to any given date, under the circumstances named.

A prisoner is not sentenced but once, and that is by the court, and if the statute was to be considered as a part of the sentence, it would hardly be within the power of the Legislature, under the case known as the "indeterminate sentence case," *People vs. Cummings*, 88 Mich., 249, to allow a board to add to or deduct therefrom; but the statute is not considered as a part of the sentence, but simply as a legislative declaration of prison rules, placing a limit upon the board and giving the prisoner, under certain circumstances, a right to earn good time, to be deducted from his sentence.

The changes, although slight in the case of first offenses, are substantial ones, while in the case of second and subsequent offenses they are very radical. The command made to the warden is specific, and I have no doubt that it is the duty of the warden to make a new register and new computation of the time under section 33, in obedience to the directions of the Legislature.

Concerning the difficulty suggested as to ascertaining whether or not a person has served one or more sentences at the State Prison, I would say that the former law, like the present, is supposed to furnish sufficient data, so that from an examination of the prison books you can ascertain the fact as to whether or not the prisoner has been previously confined in the prison.

Section 14 of the present law, which is almost a verbatim re-enactment of section 26 of the prison act of 1875, provides that, "It shall be the duty of the clerk of the prison \* \* \* to keep a register of convicts, in which shall be entered in alphabetical order the name of each convict, the crime for which he is convicted, the date of his conviction, the term of sentence, from what county, and by what court sentenced, his place of nativity, age, occupation, complexion, stature, number of previous convictions, and whether previously confined in a prison in this or any other State, together with when and how he was discharged."

If this record has been kept at the State Prison, as the law has directed in times past, you have the data in your own possession which will readily show whether or not a man has been previously sentenced to the Jackson State Prison. I am of the opinion, however, that even should the record fail to show the fact that a man had been previously confined in the State Prison at Jackson, the warden would have a right to investigate the question, as a question of fact; and if he found it to be true that a person was there serving a third term, such person would not be entitled to the good time, under the statute, even though the record failed to show that fact.

The record is not by the statute expressly made the basis for the finding of the fact by the warden, but it is, if properly kept, a very satisfactory way of settling the question; but it would probably be held to be *prima facie* evidence of the fact if it was necessary to dispute it, either by the State or prisoner, inasmuch as it is not referred to in the statute as the source of information on which the warden should act.

In reply to your second question, concerning section 9706 of Howell's Statutes, authorizing the board of prison inspectors to advertise bids for convict labor, etc., it is my opinion that that section is still in full force and effect. Neither act number 118 of the Public Acts of 1893, nor act number 140 of the Public Acts of 1891, repealed any provisions of existing law, except such as were inconsistent with the provisions of said acts 118

and 140; and I find nothing in either act 118 or act 140 which authorizes the letting of prison labor in any manner inconsistent with section 9706.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Schools—Non-resident children—Tuition.*

Where a party resides in one district and rents a farm in another, he is not entitled to send his children to the district school in which he rents the farm, without paying tuition.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Sept. 15, 1893.*

HON. H. R. PATTENGILL, *Superintendent of Public Instruction, Lansing, Mich.:*

DEAR SIR—Your question as to whether a party residing in one district and renting a farm in another district would be entitled to send his children to the district school in which he rents the farm, without paying tuition, is received.

In reply would say that a person must send his children, if he does not desire to pay tuition, to the school in the district where he resides, and the fact that he rented a farm in another district would not entitle such renter to send his children to the school in the district where the rented farm was located, without paying tuition.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Statutes—Repeal—Soldiers' aid fund.*

Act 27, Laws of 1893, is valid, and therefore repeals sections 985 to 990 of Howell's Statutes, and the State Military Board has no authority to make any requisition on the Auditor General for money under said section 990.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE. }  
*Lansing, Sept. 16, 1893.*

HON. D. B. AINGER, *Deputy Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor of the 11th inst. calling my attention to sections 985 to 990 inclusive of Howell's Statutes, and requesting my opinion as to whether these sections of the law are still in force, or were repealed by act number 27 of the Public Acts of 1893, is received and considered.

The sections to which you refer were originally passed in 1869 as act

number 35, entitled "An act to create a soldiers' aid fund, for disabled soldiers, sailors and mariners, and Michigan men who have served in the late war, in other State organizations or in the forces of the United States, and to repeal," etc.

Section 1 of said act (section 985 of Howell's Statutes) has been several times amended. The other sections of the original act (sections 986 to 990 inclusive of Howell's Statutes) have remained the same as originally passed.

The title of act number 27 of the Public Acts of 1893 is "An act to repeal act number 35, of the Laws of 1869," etc. (repealing the entire original title) "and to provide for the disposition of all moneys heretofore appropriated under the provisions of said act not yet expended."

The question is raised, and it is claimed that because said act number 27 makes no reference to the fact that section 1 of the original act (section 985 of Howell's Statutes) has been amended, it is inoperative, and therefore the Military Board are entitled to draw from the State treasury, on the warrant of the Auditor General, moneys to be used and appropriated for the soldiers' aid fund.

If section 1 is not repealed, that section would authorize the Auditor General to set aside the sum of five thousand dollars to the credit of the "soldiers' aid fund."

None of the other sections of the original act have ever been amended, and the original act is repealed without exceptions; and hence all of the other sections of the original law would be included within the repealing statute.

The State Military Board formerly derived their authority to draw this money from the State treasury under section 990 of Howell's Statutes (section 6 of the original act), and the act having been repealed without exceptions would include section 6, and the State Military Board would now have no authority whatever to make a requisition upon the Auditor General for the money to be expended in the manner provided by the original act.

Section 2 of act number 35 of 1869 (the act in question) authorized the State Military Board to make contracts; section three authorized the board to appoint a superintendent; section 4 authorized the Adjutant General to issue his order of admission to the Soldiers' Home at Harper Hospital, and section 6, as above stated, authorized the drawing and disposition of this money. All of these sections, which provide for the disposition of the money after it was once appropriated, having been repealed, I have no doubt that it was the intention of the Legislature to also repeal section 1 of the original act (section 985 of Howell's Statutes) which provides for the appropriation. There could certainly be no object in appropriating money to lie idle in the State treasury, when the law by which it could be expended has been expressly repealed; and although the Legislature omitted from the title the words, "as amended," which would apply to section 1, it must have been the intention of the Legislature to repeal every section of the original act.

It will further be observed that section 2 of said act 27 of 1893 expressly provides that "all moneys now in the hands of the State Treasurer and the treasurer of the State Military Board, belonging to any fund for which money has been heretofore appropriated, under any provision of said act, shall be deposited in the State treasury to the credit of the State military fund."

The above section is within the title of act number 27, and clearly disposes of all moneys on hand, by placing them to the credit of another fund.

The use of these moneys for the "soldiers' aid fund," when they have expressly been placed to the credit of another fund by the State Legislature, would be a misappropriation of such fund.

I therefore give it as my opinion that sections 985 to 990 inclusive of Howell's Statutes were repealed by act number 27 of the Public Acts of 1893, and that the State Military Board have no authority to make a requisition on the Auditor General for money under section 990 of Howell's Statutes, and that he would have no authority to honor any such requisition.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Statutes—Amending title—Mistake in reference.*

Where the Legislature makes a mistake in repeating the title of an act, which it is attempting to amend, it would not amend the title of the old act, and consequently would leave the provisions of the old law as it previously existed.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Sept. 18, 1893.*

HON. CHARLES S. HAMPTON, *State Game and Fish Warden, Petoskey, Mich.:*

DEAR SIR—I have received and read your opinion of September 15, addressed to the public, and also your letter calling my attention to the mistake in the title of act number 186 of the Public Acts of 1893, amending act number 159 of 1891, in which the title of the original act is misquoted.

I fully concur in your opinion that the fact that the Legislature made a mistake in repeating the title of act number 159 of the Laws of 1891, would not amend that title, and that therefore the section, as amended, would not include rivers, but only lakes, as described in the original act.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Tax warrants—Sheriffs' receipts—Payment by trespassers—Redemption—Reversion of title.*

The Auditor General may issue his warrant, in case of trespass on tax lands, either before or after the period of redemption has expired. The only taxes which are included in the warrant are those for which the land was bid in to the State, with interest, etc.

The law does not require a sheriff to give any receipt, but it may and perhaps should be given.

Upon payment to sheriff of amount demanded, the land reverts to the original owner, whether payment was made before or after period of redemption had expired.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, September 22, 1893. }

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor of September 16, asking four questions relative to section 113 of act number 206 of the Public Acts of 1893, received.

In reply to your first interrogatory, I have indicated on the copy of the warrant enclosed, changes that I think should be made by reason of the differences that exist between section 113 of act number 206 of the Public Acts of 1893, and section 103 of act No. 195 of the Laws of 1889.

The warrant enclosed by you was originally drawn under said section 103. The principal difference consists in the fact that the Legislature has provided for the issuance of the warrant by the Auditor General, not only when the State owns the lands, that is to say, after the time of redemption has expired, but also at any time during the period the State has a lien upon the lands by virtue of the sale.

The words "or the holder of any tax lien thereon," are added in section 113 of the tax law of 1893.

In reply to your second question, I would say that the only taxes that are included in the warrant are those for which the land was bid in to the State, with the interest, etc. It is made unlawful by the statute for a person to cut or remove logs, wood or timber, from lands sold and bid in to the State, where the State owns or has a lien by reason of such sale. Section 113 provides that the warrant shall give a description of the land, the amount of *such* taxes, with interest and charges thereon, then remaining unpaid, etc.

It seems to me that the words "such taxes" refer back to the taxes for which the sale is made, as no other taxes are referred to in the section.

In reply to your third interrogatory, "What receipt or other acknowledgment should be given by the sheriff, upon the payment of the amount demanded?" I would say that the statute does not provide for any receipt whatever, but I see no reason, if the money is paid without having to sell the timber seized, why the sheriff should not give to the party paying the money, a receipt for the amount of the bid, interest and costs, stating therein that the same was for the taxes, interests and costs due the State and the officer, by reason of the sale for the taxes of the years named in the warrant.

In answer to your fourth question, "Upon receipt of amount demanded, does the land still remain as State tax land, and if not, in whom is the title?" I desire to state that the payment of the amount due the State would, so far as the years named in the warrant are concerned, discharge all lien of the State for those years.

Of course if the time of redemption had not expired, the payment by any person would leave the title standing in the original owner. The statute is not quite so plain concerning the payment of taxes under the circumstances named, where the time of redemption has expired; but inasmuch as taxes are paid by the sale of the timber from off the lands, and the timber is sold to repay to the State the very consideration by which the State acquired title, it seems to me that the intention of the Legislature was that the lands should revert to the original owner, subject, however, to any taxes that might have been subsequently assessed thereon.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Probate clerk—Women may hold office of—Minors—Salaries.*

Under act 150, Laws of 1867, women, who are minors, can hold the office of probate clerk, and the board of supervisors cannot refuse an appropriation for salary on that ground.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, Sept. 27, 1893.

HON. WILLIAM P. BENNETT, *Judge of Probate, Cassopolis, Mich.:*

DEAR SIR—Your favor, asking if a young lady, under the age of twenty-one years, is eligible to the position of probate clerk, under act number 150 of the Laws of 1867, performing clerical duties only, the judge of probate signing with his proper signature, all orders, notices, decrees, etc., and further, if the board of supervisors can, under said act, refuse an appropriation for her salary for the reason that she is not twenty-one, is received and considered.

The law referred to only applies to the counties of Oakland, Calhoun and Cass.

Section one of the act provides, concerning the duties of probate clerk, as follows: "Whose duty it shall be to keep the record of the proceedings in the probate courts of said counties, in the same manner, as near as may be, as clerks in other courts of record; and such clerks may receive petitions for the time of hearings, make certificates and orders, sign and seal process issued out of the probate court, and test the same in the name of the judge of probate, and do all other acts required of said judge except making judicial decisions."

Section 4 provides: "It shall be the duty of the board of supervisors of the proper county to fix the compensation of such clerk."

There is no doubt than an infant cannot perform the duties of a judicial officer, nor perhaps one where judgment, discretion and experience are necessary to the proper discharge of the duties imposed, but where the duties to be performed are ministerial, merely requiring nothing more than skill and diligence, an infant, otherwise competent, may be the officer.

*Mechem's Public Offices and Officers, Sec. 71.*

The duties of a probate clerk come clearly within what are termed ministerial duties. It is said that a duty is ministerial when it is performed in a prescribed manner, in obedience to the law, without regard to, or the exercise of, the judgment of the individual upon the propriety of the acts being done.

*Pennington vs. Streight, 54 Ind., 376.*  
*Flournoy vs. Jeffersonville, 17 Ind., 169.*

Again, it is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law.

*State vs. Johnson, 4 Wall., 475.*

In the case of *Moore vs. Graves, 3 N. H. 408*, it was held that an infant might be legally deputed by the sheriff to serve and return a particular writ of attachment.

In the United States District Court of Indiana, it was held that the office of notary public was purely ministerial, and therefore might be held by an infant.

United States vs. Bixby, 9 Fed. Rep., 78.

Our own court has held that the office of county clerk is wholly ministerial, and where the law does not limit or restrict the clerk as to appointments of a deputy, his choice is not confined to any race, sex, color or age.

Wilson vs. Newton, 87 Mich., 493.

See also Jeffries vs. Harrington, 11 Colo., 191.

It seems to me that if the office of deputy county clerk can be filled by a woman who is under twenty-one years of age, there is no reason in saying that the office of probate clerk, the incumbent of which is vested with only a small fraction of the powers and duties of a deputy county clerk, cannot also be filled by a woman who is under twenty-one years of age, who is otherwise competent.

It is my opinion, therefore, that you would be authorized to appoint the person referred to as your clerk, and it would be the duty of the board of supervisors to fix the compensation of such clerk.

Respectfully,

A. A. ELLIS,

Attorney General.

*Recording of deeds—Official seal of notary public—Amendment of statute.*

Under act 137, Laws of 1893, a deed executed before a notary public, outside of this State, having a seal of office, is entitled to record without the certificate of a county clerk or other officer.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, October 3, 1893.

L. M. HARTWICK, *Prosecuting Attorney, Hart, Mich.:*

DEAR SIR—Your favor of September 30, asking for my opinion as to whether under compiler's section 5660 of Howell's Statutes, relative to deeds and conveyances, as amended by act No. 137 of the Public Acts of 1893, a deed executed before a notary public outside of the State of Michigan, under his seal of office, is entitled to record without a clerk's or other certificate, is received and considered.

It is my opinion that the amendment made by act number 137 of the Laws of 1893 does not change the construction that should be placed upon this section from the force and effect which was given it under the amendment of 1891, so far as the recording of deeds or other instruments executed before a notary public, having a seal of office, is concerned, and that any deed duly certified under such seal, is entitled to record without the certificate of any clerk or other officer.

Respectfully,

A. A. ELLIS,

Attorney General.

*Townships—De facto supervisors—Title to office—Quo warranto—Dissolution of townships—Board of supervisors.*

A board of supervisors has no authority to refuse a *de facto* member a seat on the board on the ground that he was not legally qualified to hold the office. Title to office can only be tested by *quo warranto* proceedings.

A township possessed of no resident freeholders cannot be changed or altered in its boundaries by the board of supervisors.

In no case can a board of supervisors dissolve or vacate a township.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, October 4, 1893.

C. M. PHELPS, *Prosecuting Attorney, Kalkaska, Mich.:*

DEAR SIR—Your favor of October 2, making the following statement, viz.: "On the eighth day of October, 1885, the township of Glade in Kalkaska county was organized by the board of supervisors of that county.

"The township has been represented on the Kalkaska county board of supervisors every year since its organization, including the year 1893, April session of that board.

"A committee of that board since the April, 1893, session, has investigated the condition of that township and will report substantially that there is not one resident freeholder in that township, and that its present supervisor does not reside there and is not a freeholder there, but resides out of that township and in the adjoining county of Grand Traverse.

"The present supervisor of that township has prepared an assessment roll for the year 1893 for that township.

"He proposes to bring the roll before the board of supervisors at its October session, and as usual take his seat upon the board, and in due time to spread a tax upon that roll.

"He will claim that in fact he is a freeholder and resides in Glade township, and has his home there, although he must admit that he has lived with his family in Fife Lake, Grand Traverse county, for some time, in a place owned or rented by him there.

"The board of supervisors may deny his right to sit upon the board, and refuse to allow him to sit there at its October session.

"It may claim that the territory belonging formerly to Glade township now belongs to some other township (probably to Springfield township, of which it was, before organization as a township, a part), or that such territory for the purpose of collecting the present tax spread upon its roll, should be annexed to some other township in that county," and asking the following questions: "First, under the circumstances, should the board refuse to allow the supervisor of Glade township a seat upon its board at its October session, 1893?

"Second, If it is proper for the board so to do, what shall be done with the present tax roll of Glade township; and to what township, if any, in Kalkaska county, does the territory of Glade township belong, or if it belongs to no organized township, by operation of law, what shall be done with it?

"Third, Would the board of supervisors, be acting within its powers in refusing the supervisor a seat upon the board and in raising the question of his title to the office of supervisor and the consequent organization of Glade township in this way?" is received and considered.

I will answer your three questions together as they all relate to the same matter.

The board of supervisors, under the circumstances named, would have no legal right to refuse the supervisor of Glade township a seat upon the board at the October session of 1893.

The question of the residence of the supervisor of Glade township is a question of fact. Residence is very largely a matter of personal choice and intention, and if the supervisor of Glade township declares that he resides in that township, the board of supervisors have no legal authority to test that question.

The right to hold public office can only be tried upon *quo warranto* proceedings and cannot be indirectly brought into question in the manner suggested.

The supervisor of Glade township, so long as he exercised the duties of the office, is an officer *de facto*, and his acts are binding upon the township and all other parties. They cannot be collaterally brought in question.

The board of supervisors have no authority to interfere with the tax roll of Glade township except in the manner provided by law, that is, to equalize the taxes upon the roll.

Glade township is a municipal corporation, created in the manner provided by the Legislature of the State of Michigan.

The Legislature have authorized the board of supervisors in certain cases to organize new townships, and also to divide or alter the boundaries of townships, under sections 486 and 487 of Howell's Statutes.

No authority whatever is given to the board of supervisors to vacate any township.

Under the circumstances named in your letter, there would be no authority even to alter the boundaries of a township, because there are not twelve freeholders in Glade township, and hence there would be no twelve freeholders to sign the petition, as required by section 486 of Howell's Statutes.

The right of the board of supervisors to act in any of these matters depends entirely upon the statutes, and when from circumstances it is impossible to bring any particular case within the statute, the board would have no jurisdiction whatever in the matter.

It will be observed that section 486 does not embrace the right to vacate a township, and if any such right had been given to the board of supervisors, all of the matters named in your letter relative to the disposition of the tax roll and the place or township to which the territory of the vacated township should be attached, would probably be covered in some manner by the statutes of the State; but the Legislature of this State, while they might, under our constitution, have delegated such power to the board of supervisors, have not done so.

Your letter does not state whether or not persons not freeholders reside in the township. It would not necessarily follow that a township should be vacated because its lands were occupied by persons who were not freeholders. Persons who reside in townships, and who do not own any land therein, are still a part of the corporation, and have rights which the laws are bound to respect.

Judge Dillon in his work on Municipal Corporations states the well established doctrine in the United States. He says: "Since all of our

charters of incorporations come from the Legislature, a municipal corporation cannot dissolve itself by a surrender of its franchise. The State creates such corporations for public ends, and they will and must continue until the Legislature annuls or destroys them, or authorizes it to be done. If there could be such a thing as a surrender it would, from necessity, have to be made to the Legislature, and its acceptance would have to be manifested by appropriate legislation. (See Dillon on Municipal Corporations, fourth edition, section 167; Beach on Public Corporations, Vol. 1, section 469; Am. and Eng. Enc. of Law, Vol. 15, page 1198, under the head of Dissolution.)

The Legislature has passed no law vacating this township, and has not authorized the board of supervisors to vacate the same, therefore from very necessity, even though the township remained dormant for want of officers and inhabitants, there is no power in the board of supervisors to interfere with the same.

In Lawson's Rights, Remedies and Practice, Vol. 1, section 505, the rule is stated that "A corporation created by the Legislature, for the purpose of local municipal government cannot, without a provision to that effect, be dissolved by the mere failure to elect officers."

In the case stated by you, the township was organized by the Legislature through the board of supervisors; that is to say, it was organized in the manner pointed out and directed by the Legislature, and of course, even though there was some mistake in the manner of its organization, under the well established doctrine in this State, after this length of time, the validity of the act of the board in organizing this township could not be questioned.

People vs. Maynard, 15 Mich., 463.

Scrafford vs. Gladwin Supervisors, 41 Mich., 647.

In order that this township shall be adjudged dissolved in any other manner excepting by act of the Legislature passed for the purpose of dissolving it, there must be a judicial determination in a court of competent jurisdiction by *quo warranto* proceedings, against the township itself or its officers.

School District vs. Owosso, 27 Mich., 3.

Donough vs. Dewey, 82 Mich., 315.

Under the circumstances stated in your letter, from very necessity, if for no other cause, it is the duty of the board of supervisors of your county to recognize the supervisor of the township of Glade, apportion the taxes to that township, and treat the township the same as other townships of the county, until otherwise ordered or directed by the Legislature of this State.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Commissioner of schools—Salary—Period of payment—Time of service.*

Under section 10, act 147, Laws of 1891, a county commissioner of schools is only entitled to compensation for the time actually in office, and if he enters upon the office between one quarter and another, he would only be entitled to the proportionate amount of salary for that quarter.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, October 5, 1893.*

E. A. MURPHY, *Commissioner of Schools, Ionia, Mich.:*

DEAR SIR—Your favor stating that on the third Monday of June you were elected commissioner of schools for Ionia county by the board of supervisors for the term commencing August 25, 1891, and ending July 1, 1893, and asking my opinion as to whether you would have a right to draw pay for the full period of two years, is received and considered.

The compensation of the county commissioner of schools is fixed at so much per annum, payable quarterly, upon the commissioner filing with the county clerk a certified statement of his or her account, giving in separate items the nature and amount of the service for each day for which compensation is claimed.

Section 10 of act 147 of the Laws of 1891.

The natural interpretation of the words "per annum" certainly is that the salary is to commence at the time when the service is to commence, and that they are to be contemporaneous with each other. This seems to be the uniform interpretation of all laws of this sort, and that when any person takes office in an intermediate time between one quarter and another, the practice is to pay him a proportion of the quarter's salary, accordingly; and if he leaves office before the end of his official year, to pay him for the like proportion of the last quarter.

*United States vs. Dickson*, 15 Pet., 141, 162.

Our own court has held that no claim can be enforced against a county for the salary or perquisites of a county officer, except for a period during which the claimant was the actual incumbent.

*Auditors of Wayne County vs. Benoit*, 20 Mich., 176.

I am clearly of the opinion that you would be entitled to compensation for only such time as you was an actual incumbent of the office; in other words, you would only be entitled to the proportionate amount of your salary for the first quarter of 1891.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Taxes—Completion of assessment commenced under law repealed.*

Assessments upon mortgages as an interest in real estate in the spring of 1893, under the tax law of 1891, are valid, and the taxes assessed in October, 1893, should be assessed as follows: The tax assessed against the value of the interest of the owner of the fee less the value of the mortgage, should be assessed opposite the name of the owner and occupant, and the tax on the value of the interest of the real estate, represented by the mortgage, should be assessed against such interest.

The saving clause in the tax law of 1893 fully authorizes this proceeding, and hence the tax would be assessed the same as though the law of 1891 had not been repealed.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, October 11, 1893. }

S. E. HAYES, *Prosecuting Attorney, Standish, Mich.:*

DEAR SIR—Your favor of October 9, stating in substance that the tax law of 1891 was repealed by act number 206, which took effect June 12, 1893; that the assessment in the spring of 1893, and the review of the assessment, took place prior to the time when act number 206 took effect, and asking whether the supervisors should spread the tax assessed on real estate mortgages on the real estate, for this present year, or what proceeding it would be legal to take under the circumstances, is received and considered.

The only tax rolls which the supervisors of the several townships have are those made under and by virtue of the law of 1891, and on which the interests owned by the owner of the fee is assessed against such owner, and the interest held by the mortgagee is assessed upon the roll against such mortgagee, as an interest in the real estate.

There is no provision in the law for changing these rolls or adding to the assessment of any man's property after the review has been had.

All assessments are to be made as of the second Monday in April. It is so provided by both the law of 1891 and the law of 1893. At the time the assessment was made the law provided that the interests of the mortgagee should be taxed as an interest in the real estate, and the simple fact that the Legislature have since changed the manner in which an assessment should be made upon a mortgage, would not necessarily discharge or relieve the owner of a mortgage from paying the taxes when assessed upon his mortgage, under and by virtue of the provisions of the old law.

It seems to me plain, from the saving clause in act number 206 that it was the intention of the Legislature that the roll made in 1891, and the proceedings already commenced by virtue thereof, should be continued the same as though act number 206 had not been passed.

Section 125 of act number 206, so far as it relates to this matter, provides: "All rights, which may have been accrued \* \* \* or become vested \* \* \* in the State, under any of the heretofore existing laws of the State which have been amended, modified, changed or repealed, shall not be affected, changed or destroyed, but the same shall remain in force \* \* \* for the completion of all proceedings heretofore begun for the collection of taxes, or the enforcement of all the requirements of such laws;" and section 126, containing a

further provision especially concerning the act of 1891, contains the further clause, namely: "Such repeal shall not destroy or affect any rights which may have accrued or may hereafter accrue under such acts or parts of acts, while the same were in force."

The making of the assessment roll in 1893 was the commencement of a proceeding for the collection of the taxes of the present year, and the proceedings thus commenced are expressly saved for the completion thereof, and for the collection of taxes.

The same question was raised at the time of the repeal of the tax law of 1882, and the enactment of the law of 1885. (See *Davenport vs. Auditor General*, 70 Mich., 192.)

The saving clause in the law of 1885 was not nearly as complete as the saving clause in the law of 1893, yet the court held that an assessment of property and its review in the spring of 1885, made under the tax law of 1882, was valid, and that the tax proceedings thus commenced could be conducted and completed under the tax law of 1885. Justice Morse, who delivered the opinion in the case above cited, among other things, said: "There is no reason why the State should lose its whole tax revenue for the year 1885 upon a technicality, to the benefit of nobody except those who desire to escape the payment of any tax whatsoever."

The change in the manner of assessment in the tax law of 1891, and that of 1893, is more radical than the change between the law of 1882 and the law of 1885; but the same necessity exists, and if the roll made in the spring of 1891 is not valid, we are forced to lose the entire revenue of the State. Such certainly was not the intention of the Legislature. It must have been intended that the roll should be used, and that the tax, so far as the year 1893 is concerned, should be assessed in all respects the same as though the law of 1891 had never been repealed.

I therefore give it as my opinion, that it is the duty of the board of supervisors of your county to order the tax assessed on the rolls the same in every respect as though the law of 1891 had not been repealed; that is to say, that the tax assessed against the value of the interest of the owner of the fee, less the value of the mortgage or other interest therein, should be assessed opposite the name of the owner and occupant, and that the tax on the value of the interest in such real estate, represented by a mortgage, deed of trust or other obligation, should be assessed against such interest, and set opposite the name of the owner of the same, as appears on the roll.

Respectfully submitted,

A. A. ELLIS,

*Attorney General.*

*Making good loss caused through the fault of a State officer—Authority of Legislature—Power of Board of State Auditors.*

There is no constitutional limitation upon the power of the Legislature to pass a resolution authorizing the Board of State Auditors to audit the claim of a private citizen for losses claimed to have been occasioned through the fault of some State officer, acting on behalf of the State, and if such resolution is passed, the Board of State Auditors has authority to act in pursuance thereof.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, Oct. 27, 1893.

*To the Honorable, the Board of State Auditors, Lansing, Mich.:*

GENTLEMEN—Your favor submitting joint resolution No. 33, passed by the last Legislature, relative to the claim of Thomas E. Mays and the evidence taken before you, and asking for my opinion as to the constitutionality of such resolution, and the right of your board to act thereon and audit the claim of said Mays, based upon the evidence taken in said cause, is received and considered.

The evidence introduced on the hearing fully covers all of the requirements of said resolution, and establishes all of the equities required by the Legislature to be established before your board.

The only question, therefore, necessary to be considered, is as to whether or not the Legislature of the State of Michigan, had, under the constitution of this State, authority to pass resolution No. 33.

It may be admitted that the State of Michigan was not legally bound by reason of the default of its officers; but it has been for many years the custom in this State for the Legislature to make good to private individuals, in certain cases, any injury that they may have suffered by reason of default of those persons whom the people have selected to represent them in official capacities.

A similar resolution was passed by the present Legislature in the case of the Jackson Stone Company, where the board of prison inspectors at Jackson, by mistake, made a mis-description of certain lands, by reason of which certain parties were misled, and the Legislature ordered that the claim be adjusted by your board.

In the case under consideration there can be no question, under the evidence, but what Mr. Mays was misled by the actions and representations of the Land Commissioner; and I think it was perfectly competent for the Legislature, if they believed the equities sufficient, to direct your board to audit and adjust the account of Mr. Mays and make good to him the loss he has sustained by reason of a default of a State officer, on receiving the credit now due to Mays at the Land Office, pursuant to said resolution.

The constitution of this State contains no limitation upon the Legislature in such matters, and as in a State the constitution is construed to be a limitation rather than a grant of power, I conclude that, inasmuch as there is no limitation or prohibition in the constitution against the Legislature making good to individuals losses occasioned under such circumstances, which call strongly for equitable relief, the Legislature of this State had a legal and constitutional right to pass said resolution, and that your board is fully authorized to act thereon and audit such claim.

Respectfully submitted,

A. A. ELLIS,  
Attorney General.

*Statutes—Time of taking effect—Conflicting clauses.*

The customary order made at the close of a law, giving it immediate effect, is no part of the law itself, and, though standing later in the enactment, will not have the effect to repeal a clause in the law providing that the act take effect on some particular contingency.

The general rule is that where two clauses of a statute directly conflict, the latter will prevail.

Under act 179, of 1893, the M. C. R. R. Co. have a right to file their acceptance of the terms of the act within a reasonable time.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, November 3, 1893. }

HON. JOHN T. RICH, Governor, Lansing, Mich.:

DEAR SIR—Your favor asking my opinion as to when act No. 179 of the Laws of 1893 takes effect, and calling my attention to the fact that the first clause of the second section provides that it shall take effect when the company files their acceptance with the Secretary of State, while the law is ordered by the Legislature to take immediate effect, is received and considered.

In reply would say that the order at the close of the law made by the Legislature that the act take immediate effect, is no part of the law itself. Such an order is made by a *viva voce* vote, and the yeas and nays are not entered upon the journal, while our constitution requires (see article 4, section 19) that "on the final passage of all bills the votes shall be by yeas and nays, and entered on the journal;" and while the rule is well settled that where two clauses in a law conflict with each other, the last clause must have effect (see section 220, Sutherland on Statutory Construction) that rule could not give an order passed by a *viva voce* vote the effect of repealing any part of a law passed in the constitutional method.

I do not, therefore, believe that the order made by the Legislature could affect any part of the law itself; that is to say, a law which is passed by a yeas and nays vote entered upon the journal, could not be repealed in whole or in part by a *viva voce* vote. Hence, the order passed by the Legislature at the close of the law, directing it to take immediate effect, must be so construed that it will not affect the law itself.

It is my opinion that the act will take effect as a contract between the State of Michigan and the railroad company, at the time the acceptance is filed with the Secretary of State, and that the order made by the Legislature, directing it to take immediate effect, should be construed as being a consent on the part of the Legislature, that if the railroad company desired they could file the acceptance at once, without waiting for the lapse of ninety days from the adjournment of the Legislature.

I have no doubt of the right of the railroad company to file its acceptance within any reasonable time, and that the taxes should be figured at the rate provided in said act 179, from the time the acceptance is actually filed with the Secretary of State.

Respectfully,  
A. A. ELLIS,  
Attorney General.

*Removal of officers—Charges must be specific.*

Charges preferred for the removal of officers must be specific, setting forth the facts and circumstances, so the accused will know what he will have to meet.

STATE OF MICHIGAN, }  
 ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Nov. 15, 1893.*

HON. JOHN T. RICH, *Governor, Lansing, Mich.:*

DEAR SIR—I have examined the complaint of Otto Gerrick and others against George Moloney, prosecuting attorney, and while the statute authorizes you to remove a prosecuting attorney for incompetency in office, the law requires that the charges must be specifically made, setting forth the facts and circumstances, so that the accused party will know just what he will have to meet.

*Metevier vs. Therrien*, 80 Mich., 187.  
*Dullam vs. Wilson*, 53 Mich., 393.

The complaint sent you, and which has been referred to me, is not sufficiently specific in order to give you any jurisdiction in the premises.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Inquests—Strangers—Expenses—Liability of State.*

Where an inquest is held on the dead body of a stranger, not an inhabitant of this State, the expenses of burial, justice fees, etc., must be paid by the State.

STATE OF MICHIGAN, }  
 ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Nov. 15, 1893.*

HON. DANIEL B. AINGER, *Deputy Auditor General, Lansing, Mich.:*

DEAR SIR—In reply to your favor of November 11, would say that if the physician is subpoenaed, in case the dead person is a resident of the county, the amount of compensation for such services should be allowed and audited by the board of supervisors; but when the justice of the peace makes an inquest upon the dead body of a stranger not belonging to this State, the expense of the burial, justice fees, and all the expenses of the inquisition, if any was taken, are to be paid to the justice of the peace from the State treasury, the account of such expense and fees being first allowed by the circuit court for the county. (See section 9593 of Howell's Statutes, and *Lachance vs. Auditor General*, 77 Mich., 563.)

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Elections—Candidates for office—Inspectors—Disposition of ballots.*

The provision of the election law that candidates for office shall not act as inspectors, applies to township, as well as general elections. Where there is no contest ballots need not be kept after the ballot box is needed for the next election.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Dec. 6, 1893.*

E. H. HOTCHKISS, Esq., *Mears, Mich.:*

DEAR SIR—Your favor of December 5 calling my attention to the provision amending the election law, which provides that no person shall act as inspector who is a candidate for any office, and who is to be elected by ballot at said election, and asking what you shall do with the old ballots used at former elections, is received.

The intention of the law was that no person who was interested in the election as a candidate for office should act as one of the judges at the election, on the principle that no man shall act as judge in his own case, and the act was intended to apply to all officers.

You will notice that act 194 of the Public Acts of 1891 applies the general law to township meetings, so far as the same is applicable thereto, and I see no reason why this provision should not be applied to such elections, and some other elector of the township substituted for the officer who, as a candidate, is interested in the result of the election.

You will observe, however, that the law now provides that ballots, which are to be marked for those who are unable to mark their own ballots, must be marked in the presence of the challengers of the respective parties, and under the law a man who was running for a township office could be appointed as one of the challengers, and in that way could object to any irregularities which he discovered, but at the same time he would not be allowed to decide in his own case, as under the former law.

You will readily see that the reason for the law applies as well to township officers as to other officers.

In reply to your question relative to old ballots, would say that you should keep the ballots in the box until the succeeding election, and then, if there is no contest pending relative to the preceding election, the ballots may be destroyed, as there is no law requiring them to be kept; if, however, there was a contest pending at that time relative to some officer who had been voted for at the preceding election, great care should be used to preserve the ballots, and to preserve them in such a manner that you would be able to testify that they were the same identical ballots used at the former election, because such ballots are the best evidence of their contents; but ordinarily, as above stated, ballots are only kept until the time the box is needed for the next election, and then they are destroyed.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Right of sheriffs to open prisoners' letters—Confinement of prisoners in cells—  
Indenturing of children.*

A sheriff can retain a prisoner's letters until his release, or open them at the prisoner's request, and read them before delivering to the prisoner.

A sheriff may confine prisoners in their cells.

There are five different methods in which children may be indentured, and the manner of each is prescribed by the act authorizing the indenture.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing Dec. 8, 1893.

STATE BOARD OF CORRECTIONS AND CHARITIES, *Lansing, Mich.:*

GENTLEMAN—Your favor, by your secretary, requesting my opinion on the following questions, has been duly received:

1. "Has a sheriff the right to open letters addressed to a prisoner in his jail?"

After giving the matter careful consideration; it would appear to me that sheriffs are authorized, under section 9640 of Howell's Statutes, to either retain the letters of prisoners in their possession, without opening, until the expiration of the prisoner's sentence, or else open the letters at the prisoner's request, and examine and read the same before placing it in his hands. This does not deny to the prisoner the privacy of his mail, if he wishes it kept for him until his release, but if he demands an immediate inspection, he must, for the safety of the public, and in the interests of good government, be deemed to have waived that privilege.

2. "Is it his right and duty, to confine prisoners who are serving sentence in his jail, in their cell?"

It is the duty of sheriffs to keep prisoners committed to their charge separate and apart from each other as far as practicable (Sec. 9639 Howell's Statutes), and to this end they undoubtedly have authority to confine prisoners in their cells. Of course if they are sentenced to solitary confinement, or are guilty of any infraction of the rules of the jail, they are then liable to be subjected to solitary confinement. (See sections 9635, 9658 and 9659 Howell's Statutes.)

3. "Can any person or persons place out children in homes without complying with all the requirements of law which govern placing out children from our State institutions? And briefly, what, in your opinion, are such requirements?"

Section 2003a2 of 3 Howell's Statutes provides five different methods in which children may be indentured. The manner of the indenturing and the particular requirements of each indenture are specifically designated in the law authorizing such indenture. The manner of indenturing children by officers of State institutions only applies to that class of indentures. In every case, however, they are to be on the approval of the person taking the child, and further must be by indenture. (See section above cited.)

Any person, officer or institution, attempting to indenture any child in any other manner than above indicated, is liable to prosecution for misdemeanor.

Respectfully,  
A. A. ELLIS,  
Attorney General.

*Soldiers' Home—Discharge of insane inmates.*

The board of control of the Michigan Soldiers' Home has no authority to discharge an inmate of such institution because he has become insane, but it is their duty to place such insane inmate in some asylum of the State, there to be maintained at the expense of the State.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, December 13, 1893.

CAPT. B. F. GRAVES, *Commandant Michigan Soldiers' Home, Grand Rapids, Mich.:*

DEAR SIR—Your favor of December 11, stating that John A. Hovey became a member of the Michigan Soldiers' Home March 7, 1887; that he came from Paris, Mecosta county, Michigan, where he has a wife and children; that he served in a Michigan regiment; that since he came to the home he has become insane and is rapidly growing worse; is now so bad that he cannot be cared for at the home, there being no place there to care for insane persons; and further stating that, acting under the late ruling of the Supreme Court of this State, holding that the fact that men who were inmates of the home do not change their place of residence, and that therefore John A. Hovey was still a resident of Mecosta county, the board at its last meeting passed the following resolution to wit:

"WHEREAS, John A. Hovey, an inmate of this home, has become so much demented that he is now insane, and tending to viciousness, and in a condition that he is liable to do himself or some of the inmates great bodily harm; and,

"WHEREAS, We have not adequate facilities to care for him here,  
Therefore, resolved, by the Board of Managers of the Michigan Soldiers' Home, that the commandant be, and he is hereby instructed to give said John A. Hovey an honorable discharge from this home, and to see that he is safely conveyed to and placed in the custody of his guardian," and further stating that a guardian was appointed for Hovey about six months ago, and submitting for my decision the following questions:

"First, Where an inmate of this home, who has a family and a well defined domicile or place of residence outside of this home, becomes violently insane, so much so that we cannot care for him here, can we discharge him and return him to the custody of his guardian, or must we send him to an asylum from here, and the State bear the expense.

"Second, Am I justified in law in carrying out the mandate of the board of managers," is received and considered.

In 1889 the Legislature of the State of Michigan passed an act entitled "An act relating to the admission of insane members of the Michigan Soldiers' Home to the insane asylums of this State, and to their support at such asylums."

The entire act is embraced in one section, which provides "*The People of the State of Michigan enact, That in case any member of the Michigan Soldiers' Home shall become insane, and shall be so adjudged according to law, and shall be sent to any one of the asylums for the insane, such insane inmate shall not thereby lose his connection with said Michigan Soldiers' Home, and the proper officers of said Soldiers' Home shall claim from the*

general government any proportion of the costs of maintaining such insane inmate, to which said Soldiers' Home is entitled by law."

As appears by your statement, John A. Hovey became an inmate of the home March 7, 1887. He served in a Michigan regiment, and by virtue of section 11 of act number 152 of the laws of 1885, as amended by act 44 of the Public Acts of 1891, he is, under your statement, one of a class of men who are entitled, under the statute, to such admission.

The first question to be considered is, has the board of control of the Michigan Soldiers' Home any authority to discharge a soldier from the institution from the fact that he becomes insane therein? It is sufficient answer to that question to say that the statute gives the board no such authority, neither does the act providing for the admission of soldiers to the Michigan Soldiers' Home make any reference whatever to their residence. Their rights are entirely governed, so far as they are entitled to relief through the home, by the fact that they are inmates of the home.

The intention of the law in the first place was that the State of Michigan should take care of all honorably discharged soldiers, "who are disabled by disease, wounds or otherwise, and who have no adequate means of support, and by reason of such disability are incapable of earning their living, and who would be otherwise dependent upon public or private charity."

Section 11 of the act under which the home was erected expressly provides that the above class shall be entitled to be admitted to said home.

It is the policy of the law that no honorably discharged soldier, who resides in this State, shall become a public pauper or be supported by the county or other local municipality.

In the act of 1889, above cited, it is provided: "That in case any member of the Michigan Soldiers' Home shall become insane, and shall be so adjudged according to law, and shall be sent to any one of the asylums for the insane, such insane inmate shall not thereby lose his connection with said Michigan Soldiers' Home."

Taking the above clause in connection with the fact that the statute gives the board of control no authority to discharge a soldier because he becomes insane, it would seem clear to me, that in case an inmate of the Soldiers' Home becomes insane, it would be the duty of the board to see that he was sent to one of the asylums, there to be cared for the same as any other inmate of the Soldiers' Home.

It is provided that by reason of his becoming insane and having been sent to an asylum "he shall not thereby lose his connection with the said Michigan Soldiers' Home."

If he does not lose his connection with the home, he is entitled to the same rights, privileges and protection as other members, among which is his support in a case where he is absolutely incapable of supporting himself.

Had it been the intention of the Legislature to allow the burden of caring for insane soldiers to be thrown upon the county from which the insane soldier came, it can hardly be presumed that they would have provided in the act of 1889 "that the proper officers of said Soldier's Home shall claim from the general government any proportion of the cost of maintaining such insane inmate, to which said Soldiers' Home is entitled by law," as there would be little reason in believing that the Legislature intended that

the Soldiers' Home should draw money from the general government to assist in the support of a soldier, and the home at the same time be under no obligations to look after such insane person.

Under the law, the State of Michigan is entitled to draw from the general government a given sum for each soldier, who is an inmate of the Soldiers' Home, and clearly the intention was that a soldier, who was an inmate of the home, and who, by reason of the visitation of insanity could not be maintained at the home, should be by the board transferred to one of the asylums and there maintained by the State, the officers of the Soldiers' Home applying for and receiving the amount due the home from the general government for the care of such inmate.

If the soldier remains a member of the home, the State would be entitled to so much assistance from the general government; if, on the other hand, by reason of his becoming insane, the board are authorized to sever his membership with the home, the State would receive no assistance from the general government for his support.

It can hardly be presumed that a law which authorized the State to take care of a soldier who was "disabled by disease, wounds, or otherwise, and who had no adequate means of support, and who, by reason of such disability is incapable of earning his living," only authorized the board to take charge of such soldier when the disability consisted of some disease of the body, and that when such soldier is further afflicted with the loss of his mental powers, in such case the board of control could transfer the responsibility from the State to the county. Such was not, in my opinion, the intention of the law.

The late decision of the Supreme Court relative to the right of franchise of inmates of the Soldiers' Home, has no application whatever to the questions submitted by you, and the board are entirely wrong in their apprehension of the effect of that decision. The question of residence or right of franchise (except that a man resides in the State of Michigan), has nothing whatever to do with the rights of an honorably discharged soldier to have a place in the Michigan Soldiers' Home.

While I can have no reason to doubt the good faith of your board in passing the resolution, and their desire to enforce the law as they understand it, I am of the opinion that their resolution is without warrant in law; is in plain violation of the spirit of the laws passed in this State for the care of honorably discharged soldiers, and that you, as commandant, would be fully justified, and it would also be your duty, as the chief officer of the Michigan Soldiers' Home, to disregard the resolution of the board, and to also take steps at once to see that John A. Hovey is admitted to one of the insane asylums of this State, there to be supported by the State of Michigan, as one of the inmates of the Michigan Soldiers' Home, in the manner provided by law.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Settlement between State and county—Deduction of interest.*

Where interest is unlawfully charged upon the books of the Auditor General against the county, the county has a right to have such amount deducted from its indebtedness to the State at the time of settlement.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, Dec. 14, 1893.

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor of December 13, referring to this office the demand of the county of Midland upon you to give them credit on general account for \$4,911.27, for the reason that said county has been charged interest upon the sum of \$27,598.32 since January 1, 1891, wrongfully and erroneously, together with the oral explanation of your chief accountant, has been received and considered.

It is stated that it appears from the books in your office that on the first day of January, 1891, by order of the Supreme Court, credit was given to the county of Midland for \$27,598.32, but that while credit was given for the above sum from that time down to the present time, the State has continued to figure interest on the quarterly balances on the balance of account, without any reference to the \$27,598.32; or, in other words, instead of figuring interest on the balance of account, they have figured the interest on the debit side of the account, without taking into consideration the above credit.

I am asked whether or not, in my opinion, the county of Midland, under the circumstances above stated, is entitled to deduct from their present indebtedness to the State the amount of interest which has been so charged upon the books of your office upon the \$27,598.32 since January 1, 1891.

In reply to your question, I would say that I have no doubt that interest should only be charged against the county of Midland on the actual balance due after deducting the \$27,598.32, and that the interest charged upon the \$27,598.32 since January 1, 1891, the time that it was credited to Midland county, is an illegal charge against said county.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Rabid dogs—Regulations—Township board of health—Nuisances.*

Rabid dogs are nuisances, and as such the township board of health has authority, under the statute, to make all necessary and reasonable regulations concerning the same as are needful to the protection of the public health and safety. The resolution, however, should be limited in its operation, to a given time.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, January 3, 1894.

HON. J. J. WOODMAN, *Paw Paw, Mich.:*

DEAR SIR—Your favor stating that in the township of Woodbridge, Hillsdale county, a rabid dog was found running at large, biting other dogs

and other domestic animals, and stating that the State Live Stock Sanitary Commission had destroyed or quarantined all domestic animals bitten, except dogs, and that the local board of health has destroyed all dogs known to have been bitten by the rabid dog, and that by resolution, the board has ordered all dogs in the township muzzled; and further stating that the prosecuting attorney of Hillsdale county was in doubt about the authority of the board to make and enforce such an order, and that the board of health desired my opinion concerning their authority in the premises, is received and considered.

Under section 1635 of Howell's Statutes, the board of health are authorized to make such regulations respecting nuisances as they shall judge necessary for the public health and safety.

Rabid dogs are regarded as nuisances (See Wood on Nuisances, Vol. 2, Sec. 771, and cases cited in note), and therefore the board of health, under the statute above named, would have authority to make any reasonable rules and regulations to prevent rabid dogs from doing injury to any of the inhabitants of the township.

Under the circumstances stated in your letter, a resolution passed by the board, requiring all dogs to be muzzled for a given time, would be reasonable, and therefore, a valid rule, and a violation of it would subject any person so violating to the penalties provided in the above section.

The resolution should recite briefly the circumstances, and be limited in its operation to a given time. The fact that a dog had been rabid in your township at one time would not necessarily make it reasonable to require that all dogs thereafter should be muzzled for all time. The board should fix such a time as would necessarily and naturally develop all cases which might thereafter arise from bites inflicted before the adoption of the resolution. The time could be subsequently extended if necessary.

With the above limitations, I am of the opinion that the local board of health has authority to pass and enforce a resolution for the muzzling of all dogs in the township.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

---

*Notary public—Signature—Initials.*

Where a commission as notary public is issued to William H. Smith, his signature to papers as "Wm. H. Smith," or "W. H. Smith," is sufficient.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, Jan. 3, 1894.

F. D. EDDY, *County Clerk, Grand Rapids, Mich.:*

DEAR SIR—Your favor of December 30, stating that a commission as notary public is issued to William H. Smith, and asking my opinion as to whether the signature "Wm. H. Smith" or "W. H. Smith" would be legal, is received and considered.

In reply would say that in this State the initial of the christian name of an officer is all the signature that is necessary, and therefore either of the signatures above mentioned would be legal, and an affidavit so certified would be binding.

The rule applying to election cases, where it is held that the initials would not be sufficient, does not apply to the signatures of public officers after they have once been elected or appointed. (See *Rice vs. People*, 15 Mich., 9.)

Respectfully,

A. A. ELLIS,  
Attorney General.

---

*Register of deeds—Appointment of deputies.*

Under section 609 of Howell's Statutes, a register of deeds has no authority to appoint more than one deputy.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, Jan 5, 1894.

ARNO JAEHNIG, *Register of Deeds, Houghton, Mich.:*

DEAR SIR—Your favor asking my opinion as to whether or not registers of deeds would be authorized, under section 609 of Howell's Statutes, to appoint more than one deputy, is received and considered.

From an examination of the statutes, I think that the register of deeds would be entitled to but one deputy who could be legally recognized.

You will notice that the statute simply provides for "a deputy," and that the statute further states, "before such deputy shall enter upon the duties of his office," etc.

The plain language of this section would confine it to but one. Upon examination of the chapter, of which the section to which you refer is a part, I am further convinced that such was the intention of the Legislature.

By reference to section 580 of Howell's Statutes, I find that it is provided that "each sheriff may appoint one or more deputies." Concerning the office of county clerk, section 573, it is provided, "each county clerk may appoint one or more deputies." Section 615, concerning county surveyors, provides, "Each county surveyor may appoint one or more deputies."

You will find by examination that the above sections are a part of the original act, and that while each of the above officers were given authority to appoint one or more deputies, the register of deeds was limited to one. I must assume that the Legislature used the language understandingly, and meant to confine the register of deeds to one deputy.

Respectfully,

A. A. ELLIS,  
Attorney General.

*Repeal of statutes—Filling deficiency in school fund—Authority of township treasurer.*

Section 43 of the tax law of 1891 was expressly repealed by act 206, Laws of 1893, and township treasurers have no authority to retain either State or county taxes to fill a deficiency in the school fund.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, Jan. 8, 1894.

LOUIS N. SCHEMMEL, *County Treasurer, Escanaba, Mich.:*

DEAR SIR—Your favor of the 4th inst., asking if section 43, act No. 200 of the Public Acts of 1891, was repealed by the tax law of 1893, and whether township treasurers have a right to retain sufficient of State and county tax to fill deficiency in school tax, is received.

Section 43 of act 200 of the Public Acts of 1891 was repealed by act 206 of the Public Acts of 1893. Section 54 of act 206 now takes the place of said section 43, and the township treasurer must pay over all the State and county taxes collected, and he has no right to retain either State or county taxes to fill deficiency in school tax.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Township elections—Candidates for office—Inspectors.*

Under the amendment to the general election law, persons who are candidates for office at a township election cannot act as inspectors at such election, as act 194, Laws of 1891 makes the provisions of the general law relative to inspectors, applicable to local elections.

Any deficiency in the number of the board should be filled by a *viva voce* vote.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, January 8, 1894.

WILLIAM A. FORBES, *County Clerk, Kalamazoo, Mich.:*

DEAR SIR—Your favor of January 6, submitting, at the request of the board of supervisors of your county, the following question, to wit: "Can any individual, whose name appears on the ticket for township office, sit or officiate as inspector or act as canvasser at such election," and asking my opinion thereon, is received.

The Legislature of 1891 passed two acts relative to elections, namely: Acts 190 and 194. The first mentioned act relates to general elections, and provides who shall be inspectors at such elections, while section 1 of act 194 expressly provides, that "all elections hereafter held in the various cities, villages and townships in this State, shall be in conformity with the provisions of the laws governing general elections, so far as the same shall be applicable thereto, and all the provisions of such laws relative to the boards of election inspectors \* \* \* \* \* are hereby made applicable to such municipal and township elections."

The Legislature of 1893, by act 202, amended section 1 of act 190, by adding the following proviso thereto: "*And provided further*, That no person shall act as such inspector, who is a candidate for any office to be elected by ballot, at said election."

The amendment to section 1 of act 190 governing general elections, would necessarily affect act 194, as act 194 expressly provides that "all provisions of such laws (the laws governing general elections) relative to boards of election inspectors \* \* \* \* \* are hereby made applicable to such municipal and township elections."

The necessary effect of the amendment of 1893, under the circumstances, is to prohibit any person from acting as inspector at an election who is a candidate for any office, to be elected by ballot at such election.

The intention of the law is that no man, who is interested in the election as a candidate for office, should act as one of the judges at the election, on the principle that no man should act as judge in his own case.

I am, therefore, of the opinion, that a person whose name appears on the ticket as a candidate for a township office at any election, would not be entitled to sit or officiate as inspector, or act as canvasser at such election.

Should not sufficient qualified township officers remain in the township to conduct an election, by reason of being candidates for office, the deficiency would be supplied by the electors present, by a *viva voce* vote, as provided in section 2 of act 190 of the Public Acts of 1891.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

---

*Conditional sales—Deeds to State for insane asylum.*

Where a deed is given to the State for the use of the asylum at Newberry, according to act 210, Laws of 1893, which contains reservations inconsistent with an absolute fee simple title in the land, it should not be accepted by the State Board of Corrections and Charities.

Deeds to the State for public buildings should grant an absolute fee.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, January 10, 1894.*

L. C. STORRS, *Secretary Board of Corrections and Charities, Lansing, Mich.:*

DEAR SIR—Your favor of today submitting to this department proposition, deeds and abstract for land for the use of Northern Michigan Insane Asylum at Newberry, is received and papers examined.

In reply to your inquiry would say that I do not think the title attempted to be conveyed to the State by the deed submitted to me, is in compliance with act number 210 of the Public Acts of 1893, providing for said asylum, and that it is defective in the following particulars:

First, The deed contains the following reservation: "A strip of land two rods in width on each side of each and every section and township line, running through or alongside of the lands hereby conveyed and above described, is expressly reserved to the party of the first part for the purposes of a public highway."

It is further provided in the conveyance: "The party of the first part, its successors and assigns, shall have the right to direct and cause the opening of said highway, and the removal of timber or other obstruction from said strip of land at any time; and in case it shall, in the judgment of the party of the first part, be impracticable to locate a public highway upon any of said sections or township lines, the same reservation and right in respect to the opening of a highway thereon, shall apply to a like strip of land lying as near to such section or township line as shall, in the judgment of the said party of the first part, be practicable and suitable for the construction of such highway."

The right to use the timber for the purpose of constructing a highway is expressly reserved in the deed, and it is further provided: "No existing road or highway across said land shall be closed without the consent of the party of the first part being first obtained."

All of the above reservations are inconsistent with an absolute fee simple title in this land, and the right of the grantor to control roads through and across the lands conveyed to the State, is inconsistent with an absolute title. No such authority or provision is found in the act providing for the receiving of the donation, but the act clearly contemplates an absolute fee simple title in the State to the land donated.

Second, But the deed in fact, as delivered to the board, is far more objectionable upon another ground. It is nothing more nor less than a conditional conveyance, by which the estate vested in the State of Michigan, may be destroyed and defeated in consequence of the non-observance of the requirements in it.

As a part of the granting clause of the deed it is provided: "Said land to be used as a site for an insane asylum building, and if at any time the use of said lands for asylum purposes is discontinued or abandoned, said land is to revert to and become the property of the party of the first part, its successors or assigns, the same as though this conveyance had not been made."

In my opinion the commissioners are not authorized to receive a conditional conveyance of this land. There is nothing in the act which gives the board any authority to accept a conditional conveyance by which the title of the State may be defeated in consequence of the non-observance of the requirements of the deed. The act certainly contains no such provisions, and section 3 provides that "The deeds for such site shall be duly executed to the people of this State and delivered to the Auditor General." I apprehend that the above language means that the State shall receive the ordinary deed, which would vest in the State a fee simple title.

The State is to construct public buildings for a particular purpose, but I hardly think the Legislature intended to say that they desired the hands of the people of the State of Michigan so tied that if for any reason hereafter it should become necessary to abandon the use of the buildings for the purpose for which they were constructed, or to use them for other purposes, they should not have the legal right to do so and retain the property, but that in such case the lands and buildings thereon should revert to and become the property of the grantors in the deed.

For the reasons above given, it is my opinion that the board should not accept the deed as now executed.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

\* *School funds—Retaining by city treasurers—Repeal of local statutes by general law.*

The city treasurer of a city whose charter provides that he shall retain sufficient State and county taxes, to fill deficiencies in the school fund, has no authority to retain such taxes, as the provisions of such charter are repealed by the general tax law of 1893.

Special laws will be repealed by general laws, where the latter are intended to furnish uniform rules for the whole State.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, January 11, 1894.*

JOHN W. SHINE, *City Attorney, Sault Ste. Marie, Mich.:*

DEAR SIR—Your favor received and contents noted.

It is my opinion that the general tax law of 1893 superseded so much of your charter as relates to State and county taxes, and that the clause in the law making it applicable to cities, where not inconsistent with their charters, simply refers to city taxes; and that therefore, the city treasurer would have no right to retain in his hands State and county taxes, to make good any deficiency in school moneys.

Any other holding would put the schools of your city on an entirely different basis than other schools in your county and others, and I do not think it was the intention of the Legislature to have the common schools of different localities on a different basis.

The general rule, as stated in *Sutherland on Statutory Construction*, is that special and local laws will be repealed by general laws, when the intention to do so is manifest, as where the latter are intended to establish uniform rules for the whole State. (*Sutherland on Statutory Construction*, 214; *State vs. Percy*, 44 Mo., 159; *People vs. Miner*, 47 Ill., 33.)

The same principle was established in the case of *People vs. Furman*, 85 Mich., 110, where it was held that the general liquor law repealed all provisions of special charters inconsistent therewith, on the theory that the general liquor law was intended for the whole State.

Very respectfully,

A. A. ELLIS,  
*Attorney General.*

*Indenturing children—Approval of applicant—Construction of statutes.*

Section 2003a2 of Howell's Statutes, which provides that no child shall be indentured "except on the approval of the person taking the child," must be construed as meaning the approval of the person taking the child by some officer named in the statute.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, February 5, 1894.*

STATE BOARD OF CORRECTIONS AND CHARITIES, *Lansing, Mich.:*

GENTLEMEN—Your favor asking for a construction of the following language: "and in no case shall any child be indentured, apprenticed,

bound out or adopted, or otherwise disposed of by any of the methods named herein, or under any law of this State, except on the approval of the person taking the child and an indenture as provided in this act," (section 2003a2 Howell's Statutes) is received and considered.

The above language concerning the approval is a little ambiguous, but it certainly means that the person who takes the child shall be approved by some of the officers named in the act, and who are authorized in the particular case to make the indenture.

The words "approval of the person" means, as above stated, that the person shall be approved, after an examination into the circumstances and home of such person, by one of the officers.

There is no authority under the laws of this State to indenture a minor in any other manner.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Taxes—Abandoned lands—Transfer to State—Construction of statute.*

The lands included in section 127 of act 206 of the Laws of 1893, are those where taxes have not been paid for more than three consecutive years next preceding the time of the examination.

Where the certificate of the examiner, under section 127, shows the lands to be "worthless" and at the same time places a value upon them, it is inconsistent with itself, and should be rejected.

Lands which have been bid into the State for four consecutive years are subject to transfer under said section 127, although the period of redemption has not expired on the last year's bid.

Section 127 took effect the same time the balance of the law took effect, to wit, June 12, 1893, and the Auditor General can act under said section at any time after said date.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, February 8, 1894.*

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor submitting four specific questions concerning the construction which should be placed upon section 127 of act No. 206 of the Session Laws of 1893, which relates to the inspection and disposition of State tax lands, is received and considered.

Section 127 provides: "Whenever it shall hereafter appear that any lands delinquent for taxes have been bid off to the State for a consecutive period of more than three years, and that no application has been made to redeem or purchase the same, it shall be the duty of the Auditor General and the Commissioner of the State Land Office, when requested so to do by the township board of the township wherein such delinquent lands are situated, to cause an examination of such lands to be made as soon as practicable, to ascertain their value and the cause of the non-payment of taxes thereon, and if it shall appear that such lands are barren, swamp or worthless lands, and have been abandoned by the owner, upon a certificate being filed by the examiner to that effect, the Auditor General is hereby author-

ized to make a transfer by deed of the same to the State, as to an individual;" and the section further provides for the recording of the deed, and that the lands afterward are to be sold by the Commissioner of the State Land Office.

In reply to your first question as to whether lands which have been bid off to the State for more than three consecutive years, but upon which, subsequent to such bids, the taxes have been paid, would be subject to the provisions of said section 127, it is my opinion that lands in the condition above described would not be subject to the provisions of that section. I think the Legislature intended to take care of lands upon which the taxes had not been paid for more than three years next preceding the time the examination was made, and by reason thereof the lands were bid off to the State.

Even though for more than three years during some period of the past, a certain piece of land had been sold for taxes, if since that time the taxes were paid from year to year, that would conclusively show that the lands were not abandoned by the owner. Wild and uncultivated lands, of course, would not be occupied, but if the owner paid the taxes or caused them to be paid from year to year, the State would have no object whatever in attempting to pass over to the Land Office such lands by reason of the non-payment of taxes.

As above stated, the object is to get off from the rolls lands on which the taxes are not paid, and I do not believe the Legislature intended to include any lands unless they had been bid off to the State for more than three years next preceding the time the examination was made, which said lands are abandoned by the owner, there being no application to redeem or purchase the same.

Your second question states: "The certificate of the examiner being filed, which certificate shows certain descriptions to be 'barren lands,' 'swamp lands' and others 'worthless lands,' accompanying each description being the examiners' estimate of the *value* of each parcel of land examined and reported upon. Should lands denominated in such certificate as 'worthless' be transferred by deed to the State in accordance with the provisions of said section, provided said certificate also shows said lands to be abandoned by the owner?"

In reply to the above question I would say that a certificate which shows that the lands are "*worthless*" and at the same time places a value upon them, would be inconsistent with itself, and I hardly think it would be a proper foundation on which to base a deed under section 127; and I would respectfully suggest that the blank for such examination, if it contains such an inconsistency, should be amended.

In reply to your third question, I would say that I think section 127 includes all lands which have actually been bid in to the State for more than three years; that is to say, for four years or more consecutively, and that the State is not obliged to wait until the time of redemption expires on the last bid. The section plainly says, "any lands delinquent for taxes bid off to the State." It makes no reference whatever to redemption, and I do not think it was the intention of the Legislature to require such delay.

Replying to your fourth question, as to a construction of the words: "Whenever it shall hereafter appear," I believe that these words refer to any lands which may appear in the condition named at any time after act No. 206 took effect, to wit, after June 12, 1893, and that the object of the law was to give the Auditor General authority to clear from the books in

his office, lands which had been bid off to the State for more than three consecutive years, and that therefore the Auditor General would not have to wait, before he could commence to act, for three years from June 12, 1893, but would be authorized, as above stated, to act at once.

Respectfully submitted,

A. A. ELLIS,

*Attorney General.*

---

*Knights of the Maccabees—Charter provisions—Exemptions from suit.*

The provisions in the charter of a fraternal insurance company that the decision of the order shall be final as to the claim of any beneficiary, and that it shall not be subject to be sued in the courts of the State, is a valid one, and binding upon the members.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, Feb. 9, 1894.*

HON. THERON F. GIDDINGS, *Commissioner of Insurance, Lansing, Mich.:*

DEAR SIR—Your favor asking my opinion as to whether the articles of association of the Supreme Tent of the Knights of the Maccabees, and Great Camp of the Knights of the Maccabees, are in accordance with act 119 of the Public Acts of 1893, is received and considered.

You call my attention particularly to the last eight lines of section 6 of the articles, which in the articles of the Supreme Tent read as follows: "It shall have the power, when an appeal is made under the laws of the order, from the action or finding of the board of trustees, to decide as to the validity of all death claims, or any other claim which a member or the beneficiary of a member, may have against it, and its decisions shall be final and binding upon every member and their beneficiaries, and no suit at law or in equity shall be commenced or maintained by any member or beneficiary against this corporation."

Substantially the same provisions are found in section six of the articles of the Great Camp.

The provision in act 119, which doubtless raised the query in your mind, is found in section 14, and is as follows: "When the foregoing requirements are complied with, such subordinate body shall be a body corporate by the name expressed in such articles, and by that name shall be a person in law capable of suing and being sued in the courts."

In my opinion the provision just quoted only applies to subordinate lodges. Submitting, however, that it applies to supreme and subordinate lodges, it cannot, in my judgment, affect the question.

Section 11, of article 15 of the constitution provides: "All corporations shall have the right to sue, and be subject to be sued in all courts, in like cases as natural persons." It is clear that whether the provision in the statute under consideration was in the law at all or not, would make no difference. It is simply declaratory of the constitutional provision.

The provision in the constitution above referred to was in force at the time of the decision of our Supreme Court in *Canfield vs. Knights of Maccabees*, 87 Mich., 626, and *Poucke vs. Society*, 63 Mich., 378. It was

held in both of those cases that a similar provision to the one under consideration was valid and binding upon the members.

I can see no distinction between those cases and this one, and must, therefore, give it as my opinion that the provision referred to is not objectionable, and cannot be any reason for refusing to file the articles.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*World's Fair Commission—Proceeds of sale of World's Fair buildings.*

The World's Fair Commission is required to pay into the State treasury the gross amount of the money realized from the sale of World's Fair buildings.\*

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, March 7, 1894.*

HON. D. B. AINGER, *Deputy Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor asking for my construction of section 8, act No. 188 of the Laws of 1891, so far as it relates to the question as to whether or not the World's Fair Commission should be required to turn into the treasury of the State the *gross* or *net* proceeds received from the sale of the World's Fair buildings and property, is received and considered.

It is my opinion that the intention of the law is that the board shall turn over to the State treasury the gross proceeds received. In other words, when the board has spent \$125,000, under the two appropriations made, they are not authorized to spend any other or further money belonging to the people of the State of Michigan. The above mentioned sum the Auditor General is expressly authorized to draw from the treasury.

I think it clear from the language used that the intention was to place upon the board the duty of selling the buildings and property, and that their compensation for so doing, as well as the expense of making the sale, is a legitimate charge against the \$125,000, and the gross sum received from the sale of the buildings and property, as above stated, must be turned into the State treasury.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Certificates of error—Refunding redemption money—Re-instating lands on books of Auditor General.*

Where a party purchases lands for taxes of 1889, and redeems 1890, and pays 1891 and 1892, and the deed for the 1889 tax is subsequently discovered to be void, the money for the four years' taxes should be refunded to the purchaser and the lands again placed on the books of the Auditor General.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, March 7, 1894.*

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor stating that "Mr. Henry Matthew made application to purchase under section 84, act 206, Laws of 1893, the S.  $\frac{1}{2}$  of the

\* See *Flynn vs. Auditor General*, 57 N. W. Rep., 1092, in which a similar ruling was made.

N. E.  $\frac{1}{4}$ , section 3, T. 28 N. 8 W., assessed for taxes for the year 1889, and deed was issued September 7, 1893; he also redeemed 1890 tax and paid 1891 and 1892, as is required by said act. It now appears that the deed for 1889 taxes is void, and subject to refunding of the purchase money under section 98. We therefore desire to ask, if it is your opinion that this office has the power or not to refund the money received for the redemption of 1890, payment of 1891 and 1892, and to reinstate the lands again on our books, subject to redemption and payment, or what redress would the party have, now being deprived of his title?" is received and considered.

It is my opinion that the title having been set aside by certificate of error under the law, the Auditor General should return the money paid, as provided in the statute, and place the lands again on the book, subject to redemption or payment.

Respectfully submitted,  
A. A. ELLIS,  
*Attorney General.*

---

*State Game and Fish Warden—Employment of clerks.*

Under section 1 of act 28 of the Laws of 1887, authorizing the payment of the necessary expenses of the State Game and Fish Warden, such warden is not empowered to employ a regular clerk or stenographer and charge their wages to the State.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, March 17, 1894.*

HON. DANIEL B. AINGER, *Deputy Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor asking whether the State Game and Fish Warden would have authority, under section 1 of act No. 28 of the Laws of 1887, to employ a clerk or stenographer in his office, is received and considered.

My opinion is that the intention of the law was simply to cover the necessary personal expenses of the Game and Fish Warden, such as traveling expenses, stationery, etc., but I do not think it could be said that the section intended to allow him to appoint permanent clerks or stenographers.

The law provides who he can appoint and how they shall be paid, and it seems to me that the fair inference would be that he would not be authorized to employ a regular clerk or stenographer, and charge their wages to the State.

Possibly, if he had clerical work to be done, which he deemed necessary, in any particular case, he would be authorized to hire the work done, and put in a bill for the same against the State. About this, however, I express no opinion, as it is not submitted in your letter.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Elections—Blank ballot—One set of candidates.*

Where a ballot containing one set of names of candidates is voted by an elector without any mark thereon, as required by law, the ballot should be counted as blank.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, March 19, 1894.

FRED H. HAYWARD, Esq., *Casnovia, Mich.:*

DEAR SIR—Your favor of March 17, stating that prior to the election in the village of Casnovia, a caucus was held, which nominated for the respective offices, those whose names appear upon an enclosed official ballot. That by reason of the fact that John E. Johnson and Fred H. Hayward, who were nominated for president and clerk, were then holding respectively the same offices and, under the law of 1893, were disqualified to act as inspectors of election, two inspectors were appointed in their places, who were candidates on no ticket, but their friends used slips and voted for the inspectors (as I would understand your letter), one for the office of president and one for trustee; that when the ballot box was opened it was found that seven of the ballots in the box had no marks on them whatever, either at the head of the ballot or before the name of any candidate; that the counting of those votes would elect Johnson president and Bell trustee, and that the rejection of those seven votes would elect men, who were slipped over those names, by one majority. That the board of inspectors counted the seven ballots as blanks.

Your letter and enclosed ticket further shows that there was only one set of candidates nominated, to wit:

## OFFICIAL BALLOT.

(INSTRUCTIONS.)

Name of office voted for.

Village ticket.



For President.....  
For Clerk.....  
For Trustee, 2 years.....  
For Trustee, 2 years.....  
For Trustee, 2 years.....  
For Treasurer.....  
For Assessor.....  
For Street Commissioner.....  
For Marshal.....  
For Constable.....

☐ John E. Johnson.  
☐ Fred R. Hayward.  
☐ Darwin G. Bell.  
☐ Adam Heiser.  
☐ Augustus C. Ayers.  
☐ Edward A. Webb.  
☐ Benjamin S. Tredway.  
☐ Azariab Lynch.  
☐ Frank R. Howes.  
☐ Harry Edwards.

And submitting the question whether or not those seven votes in my opinion should have been counted, is received and considered.

The law of 1891, as amended by act No. 202 of the Public Acts of 1893, requires certain things to be done by the voter in order to entitle his ballot to be counted.

By a comparison of the instructions at the head of the ballot, as originally adopted in 1891, with those of 1893, you will see that the Legislature made a radical change in that regard.

The instructions as adopted in 1893 (see Public Acts of 1893, page 327) provides first: "*In all cases stamp a cross in the circle under the name of your party at the head of the ballot. If you desire to vote a straight ticket nothing further need be done.*"

The last clause of the instructions provides further: "If you wish to vote for a candidate not on any ticket, write or place the name of such candidate on your ticket, opposite the name of the office."

The case stated by you is one of the cases included in the words "In all cases," and, as above stated, the instructions clearly provide that if a party desires to vote "*a straight ticket*" he must put a cross in the circle. Now, can it be said that with that kind of instructions at the head of a ticket, a person can vote a "straight ticket" by not making any marks at all on the ticket?

The presumption is that every voter knew the law, and knew that if he was going to vote at all it was his duty to mark his ballot as provided by law.

Not only were the instructions at the head of the ticket materially changed in 1893, but a radical change was also made in section 26, and it is there stated in the most positive terms: "*If the party desires to vote a straight ticket, he must stamp a cross in the circle under the name of his party at the head of the ballot.*"

It is further provided in the same section: "A ticket marked with a cross in the circle under a party name, will be deemed a vote for each of the candidates named in such party column whose name is not erased, except those candidates \* \* \* \* where a name is written or pasted on the party ticket of some candidate whose name is not printed as a candidate on any party ticket."

And again in the same section, it is provided: "If no cross is placed in the circle under the party name, a cross in the square before the name of any candidate shall be deemed a vote for such candidate, except in cases where the elector votes for more candidates for the same office than are to be elected."

From a careful reading of the law, and a consideration of the objects which are to be attained thereby, it seems clear to me that a person who does not indicate upon his ticket by a cross in the circle under his party name, or a cross before the name of some candidate for whom he desires to vote, simply votes a blank ticket.

An elector has a right to vote for whom he pleases, and has a right to vote a blank on any question, and it is not an unusual thing for an elector to so vote on questions submitted to the people.

Supposing for a moment that we should say that there being no marks at all upon this ticket, and there being but one set of candidates, each of the candidates thereon named would be entitled to one vote. What authority in the law would we find for such a position?

First, We would find that the instructions at the head of the ticket were in direct opposition to it. Next, that in section 26 it is expressly provided that if the party desires to vote a straight ticket "*he must stamp a cross in the circle* under the name of his party, at the head of the ticket."

Would we not be substituting our own judgment, and our own way of marking a ticket, for and in direct opposition to the plain provisions of the law?

I can readily see how a man might express his choice upon a ticket,

even though there were two sets of candidates without putting a cross on the ballot. Supposing in this case the ticket had contained two sets of names all the way down, and the voter, instead of placing a cross at the head of his own ticket, had simply erased the names of every candidate on the opposite ticket. Why could it not be inferred just as well that he intended to vote for every candidate whose name he had not erased, as that he intended to vote for candidates on a ticket where he had left the ticket, so far as his own acts are concerned, absolutely blank? The trouble with both cases is that the voter has not signified his intention in the manner provided by law.

But again, supposing we consider that this ticket in Casnovia, having been left blank, should be counted one vote for every man on the ticket. That, of course, would credit one for Harry Edwards, constable. Now, supposing we take the same ticket and put a cross before Harry Edwards, constable. What would be the result of such marking? It certainly would not result in giving Harry Edwards any more votes, because he was entitled to one vote if we are to count a blank ticket, without any cross at all before his name. And he would be entitled to but one vote if we place a cross before his name. The simple result of placing a cross before Harry Edwards' name, if we are going to count a blank ticket in the first instance, would be that every person on the ticket would be deprived of one vote. In other words, indicating that we intend to vote for Harry Edwards, which according to the other theory was indicated without any marks at all, deprives every other man on the ballot of one vote.

Such a position is simply absurd upon its face, and is the result of giving a blank ticket the same force under the law as a ticket that is marked according to law.

In my opinion the seven tickets on which there was no cross should be counted as blank, and therefore, it is also my opinion that your inspectors were right in the disposition which they made of the seven unmarked ballots.

Respectfully submitted,

A. A. ELLIS,

*Attorney General.*

---

*Registration—Authority of the board of registration—Electors right to vote.*

Under section 92 of Howell's Statutes the board of registration must examine the applicant, and if they are satisfied from the evidence that he is not an elector, they have a right, and it is their duty, to refuse to register his name.

In the case of a person offering to vote, the rule is different. If he takes one of the oaths prescribed by the statute, his vote must be received.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, March 23, 1894.*

SHERMAN T. HANDY, Esq., *Crystal Falls, Mich.:*

DEAR SIR—Your favor received.

Section 92 of Howell's Statutes provides: "Neither the board nor any member thereof shall write or enter therein (referring to the registration

book) the name of any person, nor suffer him to write or enter his name therein, whom they know or have good reason to believe, not to be such resident and so qualified; nor shall any person knowingly, or having good reason to believe himself not to be such resident and so qualified, write his name therein."

It was held in the case of *People vs. Board etc.*, of Detroit, 17 Mich., 427, that it was the duty of the board to examine the applicant on oath and hear any testimony offered by him relative to his right to be registered, and draw a reasonable conclusion therefrom and to decide the question.

If the board are satisfied from the evidence that an applicant for registration is not an elector, they should not register his name.

In a case of a person offering to vote the rule is entirely different. A person who offers to vote, and takes one of the oaths prescribed in the election law, is entitled to vote, as the law expressly provides that under such circumstances "his vote shall be received." (See *Wolcott vs. Holcomb*, 56 N. W. Rep., 837.)

In such case the rights of the public are fully protected by numbering the vote, and pasting a paper over the number as provided by law.

Respectfully,

A. A. ELLIS,

*Attorney General.*

---

*Discretion of Auditor General in payment of clerks—Warrants.*

The Auditor General has authority to draw warrants on the State treasury in payment of the services of extra clerks, weekly, monthly, or at such other times as in his judgment, will best serve the interests of his department.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, March 24, 1894.*

HON. D. B. AINGER, *Deputy Auditor General, Lansing, Mich.*:

DEAR SIR—Your inquiry as to whether or not the Auditor General has authority, under the law of the State, to draw warrants on the State treasury in payment of the services of extra clerks at other times than at the end of each month, is received and considered.

The authority of the Auditor General to employ extra clerks was first found under the law of 1846, in what is now section 284 of Howell's Statutes. The compensation for clerks under that law was much less than under the present law, but the provision therein contained for the payment of clerks has never been changed by the Legislature, and you will observe by the last line of section 284 that the salaries of the extra clerks are "payable monthly or otherwise, as the Auditor General may think proper."

The compensation which may be paid a clerk in the Auditor General's department is now covered by section 339 of Howell's Statutes as to the amount, and the only limit placed upon the Auditor General by that section is found in the following clause: "For such additional clerks in the

Auditor General's office \* \* \* as may be necessary, not exceeding at the rate of one thousand dollars per annum for the time employed."

The fair inference from the last above quotation is that the employment of the clerks, and the rate at which they shall be paid, subject to the limitation of not exceeding one thousand dollars per annum, is left entirely to the discretion of the Auditor General, and when that clause is considered in connection with the last line of section 284, which expressly provides that salaries of clerks "shall be payable monthly or otherwise, as the Auditor General may think proper," it does not seem to me that there can be any doubt but what it is within the discretion of the Auditor General to pay his clerks weekly, monthly, or at such other times as in his judgment will best serve the interests of the State, and that he is authorized to draw his warrant at such times as in his judgment will best serve the interests of his department.

Respectfully submitted,

A. A. ELLIS,  
Attorney General.

*Refunding purchase money—Cancellation of sale—Authority of Auditor General—  
Judicial questions—Unrecorded plats.*

Under the tax law, the Auditor General has no authority to refund purchase money and cancel sales, for the reason that the lands were erroneously described. Such a question involves a judicial determination, and the Auditor General has no judicial powers, except such as are expressly conferred by statute.

An assessment of lands for taxes is valid, though the plat was never recorded.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, March 28, 1894. }

HON. D. B. AINGER, *Deputy Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor stating, "Application has been made at this office for cancellation and refunding purchase money on lots 7, 8, 9, 10, 11 and 12, Lathrop subdivision of lot 22, Seymour's Sub., on S. W.  $\frac{1}{4}$ , Sec. 10, city of Lansing, for the reason that said description was erroneously assessed, claiming it should have been assessed as the W.  $\frac{1}{2}$  of the S. 10 acres, of the W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$ , Sec. 10, etc.

"It appears by the records of the city treasurer's office and this office, that said land has been assessed as first described above, for a number of years prior to 1887, and was recognized by the owner, and paid up to and including 1886, since which time the owner has not paid the taxes, and the lands were returned delinquent for the years 1887, 1888, 1889, 1890, 1891 and 1892, and were sold to Judson, Wiley & Judson, under section 84, act 206, Laws of 1893.

"We herewith hand you the deed, certificate of redemption, and receipts of payment, also the evidence on which it is claimed that the cancellation and refunding should be made. We respectfully ask that you examine the matter and return the papers with your opinion as to the power of this office, in making the cancellation and refunding in this case," is received and considered.

I have examined the evidence laid before your office and the reasons urged why you should cancel the sale and refund the purchase money. Such reasons are matters outside of the records of your office, and outside of the necessary records in the county treasurer's office. In short, it is urged that because no plat appears of record, you should find that the lands were not platted, and therefore not properly described, and for that reason refund the money.

It is sufficient answer to this position to say that the question submitted to your office for a decision is not one over which you have any jurisdiction under the tax law of the State of Michigan. The question presented is a mixed question of fact and law, which requires a judicial determination. The Auditor General's office is one of the executive branches of the State government, and the Auditor General's jurisdiction is confined by the law. He has no judicial power, except perhaps, in some very limited cases where such authority is expressly given by the statute. The reasons urged for setting aside the sale or refunding the purchase money in this case, are not among those named in the statute, and by reason of which the Auditor General is given authority to act.

The law does not require that a plat shall be recorded in order that lands may be assessed according to the plat. If the lands in this instance were actually platted, then the assessment is valid, whether the owner of the land had had the plat recorded or not. Concerning this question, the people of the State of Michigan are entitled to a hearing under any circumstances, before they could be required to return the money, and, as above stated, the law does not furnish the people any opportunity to be heard before the Auditor General.

The money received from these parties for purchase has no doubt been carried into the State treasury, and there must be some positive law authorizing the Auditor General to draw this money from the treasury and return it; otherwise, he would have no right so to do.

I am unable to find, under the circumstances stated in your letter, that you have any jurisdiction whatever to pass upon the question presented by Messrs. Judson, Wiley & Judson, and I therefore give it as my opinion that you should refuse to cancel the sale or refund the purchase money.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Assessment rolls—Dollar marks.*

While the valuations placed upon the assessment roll are not required to be preceded by a dollar mark, in order to make the roll valid, yet as a matter of precaution, when the tax is extended upon the roll, it should be preceded by a dollar mark, or have the words "dollars" and "cents" written at the head of the column.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, March 29, 1894.*

HON. D. B. AINGER, *Deputy Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor asking whether in my opinion it is necessary that the assessment, tax and return rolls have the word "Dollars" or the

"\$" at the head of the figure column in view of the opinion of the Supreme Court in the case of *Millard vs. Truax*, is received and considered.

In reply to your inquiry would say that the case of *Millard vs. Truax* relates neither to the valuation of the property nor the assessment of the tax, but to the final decree of the circuit court.

In the case of *Bird vs. Perkins*, 33 Mich., 30, the question as to whether or not the "\$" should precede the figures indicating the valuation of the property on the roll, and whether or not if it did not appear the assessment would be invalid, was passed upon by the Supreme Court of this State, Mr. Justice Cooley delivering the opinion of the court, and they not only held that the omission of the "\$" did not render the assessment invalid, but they used the following language: "The decision in *Cahon vs. Coe*, 52 N. H., 518-524, and *State vs. Eureka, etc., Co.*, 8 Nev., 15, which to us are satisfactory, would sustain the roll without it."

The two cases therein approved by Mr. Justice Cooley held that a tax assessed upon property is valid although not preceded by the "\$."

The question of the assessment of the tax was not really in issue in the case of *Bird vs. Perkins*, but only as to the valuation of the property, and hence it might be said that so far as the case attempts to adopt the rule in New Hampshire and Nevada relating to the assessment of the tax, the above decision is a mere dictum.

The question as to whether or not the "\$" should necessarily precede the valuation of the property on an assessment roll, was again before the Supreme Court in the case of *First National Bank of St. Joseph vs. St. Joseph*, 46 Mich., 526, and the court held that the "\$" on the assessment roll was not necessary.

I do not think that the case of *Millard vs. Truax* has in any manner weakened or annulled these decisions, and I have no doubt but that an assessment of the valuation of property, which is usually made in dollars, would be perfectly valid without either the word "Dollars," or the "\$" preceding the valuation. I am not so clear, however, concerning the assessment of the tax, and am inclined to believe that it is far safer, in extending the tax upon the assessment roll, to require the words "Dollars" and "Cents" to be written at the head of the proper columns, or the "\$" to be used in lieu thereof.

In as much as the blanks for the assessment rolls are already in the hands of the county clerks, to be distributed to the assessing officers, I would very respectfully suggest that proper instructions be sent to the several supervisors or boards of supervisors, on or before the annual meeting in October next, instructing them how to amend their rolls before extending the tax, by placing at the heads of the proper columns the words "Dollars" and "Cents" or the "\$." While this may not be absolutely necessary, still it is a reasonable precaution and will certainly obviate any trouble with the taxes in the future.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Local option—Re-submission—Repeal.*

The board of supervisors can act upon local option petitions and submit the question a second time any time after two years from the date of the first election.

The election on such questions may be held not less than forty nor more than sixty days from the date of the order of the board of supervisors. The board of supervisors can pass a resolution to repeal any time after May 1.

When the question of local option is re-submitted, and is defeated, that is, not repealed, it does not require any action on the part of the board of supervisors, but the law simply continues in force.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, March 30, 1894.*

GUY M. CHESTER, *Prosecuting Attorney, Hillsdale, Mich.:*

DEAR SIR—Your favor received.

You state that the resolution of the board of supervisors to submit the question of local option in the first instance was made December 31, 1891; that the election was held February 29, 1892; that the result of the vote was in favor of local option. The following questions are submitted:

"1. Can board act at all upon petitions before the two years expire? That is, can a resolution calling an election be passed by the board before May 1, 1894?"

A. In my opinion the board can again act upon the petition, and again submit the question, any time after February 29, 1894. (See section 9, act 207 of the Laws of 1889.)

Under my interpretation of the law it makes no difference which way the question was decided in the first instance.

Your second question is answered by the above.

"3. How soon may an election on such submission be had?"

A. Not less than forty nor more than sixty days from the date of the order of the board of supervisors submitting the question. (See section 6, Id.)

"4. When may the board pass a resolution to repeal?"

A. Any time after May 1, 1894.

"5. If the repeal is after May 1, does it take affect on the day of passing the resolution?"

A. Yes.

"6. If local option is once adopted and duly submitted a second time to the people, and the will of the people is that the local option law should govern, does it require another resolution to that effect, or a resolution that the law (local option) be not repealed?"

A. In my opinion, if the proposition is defeated, the law simply continues in force, and any action by the board of supervisors is unnecessary.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Statutory construction—Amendments—Effect—Existing railroads.*

An amendment to the general railroad law, which exempted from taxation railroads "hereafter incorporated," was for the purpose of encouraging the building of new roads, and does not apply to railroads existing at the time the amendments took effect.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, April 20, 1894. }

HON. S. R. BILLINGS, *Commissioner of Railroads, Lansing, Mich.:*

DEAR SIR—Your favor of April 18, stating "A question has arisen in this department as to whether act No. 174 of the Session Laws of 1891, amended by act number 129 of the Session Laws of 1893, wherein it says in the last part of section 3 of said act, that 'the rate of taxation fixed by this act or any other law of this State, shall not apply to any railway or railroad company hereafter building and operating a line of railroads within this State, north of parallel 44 of latitude.' etc.

"The facts in this case are these:

"First, The Manistee & Grand Rapids Railroad Co., by report of 1891, made to this department, filed articles of association November 11, 1889, and, by evidence, commenced constructing their road the year named. The road is located north of 44 parallel.

"Second, The road was sufficiently constructed so as to commence operations for hauling logs in August, 1891, and reported that up to the 31st of December the earnings of the road amounted to \$18,862.13, and the earnings of the road for the year ending December 31, 1892, \$38,192.19, and the report for the year ending December 31, 1893, was \$34,295.16.

"Third, The president and auditor of the company admit that their road had earnings in August previous to act No. 174 of 1891 taking effect, which did not go into effect until October 2, 1891; and we have also affidavits showing the same facts, that the road was operated previous to the law taking effect.

"Now, the question is, is this company, the Manistee & Grand Rapids Railroad, exempt from taxation by the provisions of the law of 1891?" is received and considered.

In reply would say that I think the object of section 3 of article 3 of the general railroad law, as amended by act 174 of 1891 and act 129 of the Session Laws of 1893, was to encourage the construction of railroads north of parallel 44 of latitude; but the exemption from taxation is expressly limited to railroad companies "hereafter building and operating a line of railroad within this State north of parallel 44 of latitude," etc.

Under your statement, the Manistee & Grand Rapids Railroad had already been constructed and was being operated at the time the amendment of 1891 took effect. The amendment would speak only from the time it actually went into force, and if I am right that the exemption was made for the purpose of encouraging the construction of new roads, then, as a matter of law, the amendment would not apply to a railroad then constructed and being operated.

I am, therefore, of the opinion, under your statement of facts, that the Manistee & Grand Rapids Railroad is not exempt by virtue of the amend-

ment made to section 3 of article 3 of the general railroad law by act 174 of the Session Laws of 1891, as amended and re-enacted by act 129 of the Session Laws of 1893.

Respectfully submitted,  
A. A. ELLIS,  
*Attorney General.*

*Taxes—Mortgages—Non-residents—Deduction for credits—Assessing banks.*

Real estate mortgages are assessed as personal property to the owner where he resides. Real estate mortgages held by non-residents are not assessable in this State. Deductions for indebtedness can only be made from personal property credits, and personal chattels can not be considered. Manner of assessing property of banks stated. Mortgages on real estate cannot be deducted from the value of the real estate.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, April 21, 1894.*

G. E. SANDER'S, *City Attorney, Mason, Mich.:*

DEAR SIR—Your favor of April 20 submitting five questions, is received. I repeat your questions and reply to each.

"1. If a person lives in Mason and holds a mortgage on lands outside of the city, where should the mortgage be assessed?"

A. The mortgage, under the tax law of 1893, is considered as personal property, and should be assessed where the owner resides in Mason.

"2. To whom and how should a mortgage held by a non-resident be assessed?"

A. The law of 1893 makes no provision whatever for the assessment of mortgages held by non-residents of the State. If the mortgagee resides anywhere in the State, a mortgage on property situated in Mason would be assessed as personal property to the mortgagee in the township where such mortgagee resides.

"3. Suppose a man owns property in Mason, and owes \$1,000 on property outside. Could you deduct that indebtedness from the value of the property held here?"

A. If the property owned in Mason was real estate or personal property chattels, there could be no deduction on account of the indebtedness, but if the property owned by the person who resides in Mason consists of bills receivable, notes, bonds, or like class of property, then the taxpayer would be entitled to a deduction of the \$1,000. The tax law of 1893 only allows credits to those persons who have their property invested in notes, bonds, mortgages or other bills receivable.

"4. Should mortgages held by banks and assessed to them in the county be deducted from their stock in assessing the same? That is, are mortgages meant where the law says 'The real estate assessed to the banks shall be deducted from the amount of their capital stock?'"

A. Real estate mortgages are not included in the clause referred to. The real estate which should be deducted from the capital stock of the bank is the actual value of the lands held by the bank. A bank is allowed,

of course, to take out from its assets its liabilities, and in that way, after deducting its liabilities for moneys on deposit, etc., from the bills receivable, which would include the real estate mortgages, what is left, together with the real estate, represents the actual value of the stock; for, if the amount of the assets exceeds the liabilities more than the face value of the stock, the amount is added to the stock and called surplus. For instance if the stock of a bank is worth \$1.20 on its face value in the market, you would multiply the face value by \$1.20, and then deduct the value of the real estate actually held by the bank, and the residue would be the value of the capital stock, to be assessed as personal property. This divided by the number of shares would be the value of each share. A bank only pays taxes on the value of its property over and above its liabilities, and it will be seen that the above computation would include all of the property of the bank, the real estate mortgages being considered as personal property assets.

"5. Should the amount of a mortgage on a piece of property be deducted from the cash value in making an assessment?"

A. No. Under the law of 1893, no deduction is made from the value of real estate by reason of the mortgages thereon, but real estate must be assessed at its true cash value, and the mortgage is assessed to the mortgagee where he resides, as personal property, as above stated.

Respectfully submitted,

A. A. ELLIS,  
Attorney General.

---

*Taxes—Repeal of statutes—Mortgages—Deductions.*

Act 26 of the Laws of 1893 is repealed by Act 206 of the Laws of the same year.

Mortgages on real estate cannot be deducted from the value of the real estate.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, April 21, 1894.

JOHN G. NAGLER, *County Clerk, Hastings, Mich.:*

DEAR SIR—Your favor of April 20, written in the interest of the supervisors of your county, and asking: "Does section 126 of act No. 206, Laws of 1893, repeal act No. 26, Laws of 1893? If so, is the mortgage deducted from the value of the real estate and assessed as personal property to the mortgagee?" is received and considered.

In reply would say that act No. 26 of the Laws of 1893 was repealed by section 126 of act No. 206 of the Laws of the same year.

In reply to your second question. The mortgage is not deducted from the value of the real estate under the law of 1893.

Under the law as it now stands, real estate must be assessed at its true cash value, without regard to mortgages thereon, and real estate mortgages must be assessed as personal property, and are assessable to the mortgagee in the township or ward where the said mortgagee resides.

Respectfully submitted,

A. A. ELLIS,  
Attorney General.

*Schools—Rules of school board—Admission of pupils.*

A school board may make reasonable rules and regulations for the government and control of the school, but it cannot enact a rule denying children the right to enter school at any time during the year.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, April 21, 1894. }

PROF. E. L. GRIFFITH, *Hart, Mich.:*

DEAR SIR—Your favor of April 19 stating that "This spring twelve little children made their appearance at the first primary department for enrollment. They were of proper age, but the department is crowded now, every seat in the room being taken. At my suggestion the board prohibited them from entering this spring term. This term finishes the year, and a class is promoted, thus giving these children room, and the teacher will have time to properly start them aright," and asking: "Have not the school board the right to determine the time when first grade pupils can enter, say at the beginning of the year, and thus not to interfere with grades already established," is received and considered.

In my opinion the rule made by the board is unauthorized by law. It simply amounts to keeping out of the school twelve of the pupils who are drawing public money and entitled to participate in the benefits of the school.

While a school board can make any reasonable rule for the government and control of a school, and may expel children who are unmanageable, they have no legal right to establish rules which virtually exclude from the schools pupils within the school age, and who are not guilty of violating any reasonable rule concerning the government of the school.

If it be admitted for a moment that your board could make a rule by which certain pupils could not attend school, unless they commenced at a certain part of the year, the same reasoning would allow them to make a rule by which classes should commence only once in two years.

The free school system of this State is not based upon any such theory.

If there is no room, the statute gives the board authority to furnish room, and I do not believe you could prohibit the twelve pupils from entering the school.

Respectfully,  
A. A. ELLIS,  
Attorney General.

*Surveyed townships—Labor and money tax—Where expended.*

Highway money tax, or highway labor, must be expended within the limits of the surveyed township in which it is assessed and collected.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, April 27, 1894. }

CHARLES CRAWFORD, *Supervisor, Red Oak, Michigan:*

DEAR SIR—Your favor asking whether, in case an organized township consists of two or more surveyed townships, the highway labor and money

tax assessed within the township for highway purposes, should be expended on roads in the surveyed township wherein it was collected, or can it be expended on roads anywhere within the organized township, is received and considered.

Section 1338 of Howell's Statutes, as amended, provides: "All highway labor, and all money tax, assessed and collected within any township for highway purposes, shall be expended within the limits of the townships on which the same may be assessed, unless otherwise provided by law."

In the case of *Lumber Company vs. Township of Springfield*, 92 Mich., 277, it was held that the word "townships," as used in this section, means surveyed townships.

Highway money tax, or highway labor, must, therefore, be expended within the limits of the surveyed townships in which it is assessed and collected.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

---

*Census enumerators—Appointment to office—Township boards.*

A member of the township board is eligible to the office of census enumerator, but he cannot legally be appointed to the office if his own vote is necessary to secure him the appointment.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, April 28, 1894.*

N. T. WHITING, Esq., *Supervisor, Richland, Mich.:*

DEAR SIR—Your favor stating that at a meeting of the township board held to appoint a census enumerator, the township clerk voted himself into said office, and asking my opinion as to the legality of such appointment, and as to the right of a township clerk to vote generally on questions arising before the township board, is received and considered.

Section 744 of Howell's Statutes makes a township clerk a member of the township board, and he would, of course, have the same right to vote as any other member of the board; but any member of the board is rendered incompetent to act upon any matter in which he is interested, and should he do so, the action of the board upon that subject would be illegal.

*Stockwell vs. White Lake*, 22 Mich., 341.

I understand from your statement that the vote of the township clerk was necessary to his appointment. If this be true, there is no doubt but what the appointment is illegal.

It is contrary to public policy to permit an officer, having the power to appoint to an office, to exercise that power in his own interest by appointing himself.

*People vs. Thomas*, 33 Barb., 287.

In the case of the *State vs. Hoyt*, 2 Oreg., 246, it was held that where a

board appointed one of its own number, and the vote of the appointee was necessary to the appointment, their action was void.

Although section 1 of act 178, of the Laws of 1893, provides that a member of the township board shall not be ineligible to appointment to the office of census enumerator, yet this statute must be construed in view of the well settled rule of law above stated, and I am of the opinion, therefore, that a member of the township board can only be appointed to the office of census enumerator in cases where his vote is not necessary to the appointment.

Respectfully submitted,

A. A. ELLIS,  
*Attorney General.*

*Removal of officers—Charges must be specific—Endorsement of prosecuting attorney.*

Charges preferred to the Governor for the removal of an officer must be specific, and must be verified by the affidavit of the party making them. They must also be endorsed by the prosecuting attorney, that in his opinion the case demands investigation.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, May 1, 1894.*

HON. JOHN T. RICH, *Governor, Lansing, Mich.:*

DEAR SIR—Your favor enclosing petition of citizens of Spurr township, Baraga county, asking for the removal of one John Ryan, a justice of the peace of said township, for incompetency, and requesting my opinion as to what power you have in the matter, is received and considered.

The petition states that the party referred to is partly blind and uneducated. This is the only charge or the only statement of fact made. There is attached to the petition an order made by the township board, which is signed by all of the members of the board except said justice, who signs by his mark.

Section 653 of Howell's Statutes gives you authority to remove such officer when you shall be satisfied, from sufficient evidence submitted to you, that such officer is incompetent to execute properly the duties of his office; but said statute further provides that you shall take no action upon any charges made until the same shall have been exhibited to you in writing "verified by the affidavit of the party making them, that he believes the charges to be true, with a statement of the prosecuting attorney of the county, that, in his opinion, the case demands investigation." The same section further provides that a copy of the charges shall be served upon the party.

There is no affidavit made in support of the petition, as is required by the statute, neither is there any endorsement of the prosecuting attorney, as is required. The letter of the prosecuting attorney, which you enclose, would not be sufficient, as he does not state that in his opinion an investigation should be made. Furthermore, the charge that the officer "is partly blind and uneducated" is not sufficiently specific. Until the pro-

visions of the statute concerning the endorsement of the prosecuting attorney and the verification of the charges, have been complied with, it is my opinion that you would not have authority to order an investigation.

Metevier vs. Therrien, 80 Mich., 187.  
McLaughlin vs. Burroughs, 90 Mich., 311.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

---

*New corporations—Surrender of old charter—Franchise fee.*

A railroad corporation, surrendering its specific charter and re-incorporating under the general law, becomes a new corporation, and liable to pay the franchise fee before their new articles can be filed with the Secretary of State.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, May 2, 1893.* }

HON. WASHINGTON GARDNER, *Secretary of State, Lansing, Mich.:*

DEAR SIR—Your favor inclosing the resolution of the stockholders of the Grand River Valley Railroad Company, authorizing the surrender of their former charter, and the certificate of the president and secretary of said company that said company has surrendered its charter and incorporates under the general railroad law of this State, and requesting my opinion as to whether said railroad company should be required to pay the franchise fee provided by act 182 of the Laws of 1891, as amended by act 79 of the Laws of 1893, is received and considered.

Said resolution and certificate are made in accordance with the provisions of act 52 of the Laws of 1891, which amends the general railroad law, by authorizing railroad companies organized under special charter to surrender their charter and incorporate under said act 52. Said Grand River Valley Railroad Company was incorporated by an act of the Legislature, approved May 4, 1846, and by virtue of such resolution and certificate, it surrenders its special charter granted under said special act, and incorporates under a different law.

The surrender of the charter works a dissolution of the former corporation, and the corporation which now presents its articles for filing, although bearing the same name as the old corporation, is entirely a new corporation, subject to all the rights and liabilities of the former corporation.

The resolution and certificate treat the present corporation as a new corporation. Said act 52 also refers to corporations organized under that act as new corporations.

Section one of act 181 of the Laws of 1891, as amended by act 79 of the Laws of 1893 provides: "That every corporation or association hereafter incorporated or formed by consolidation or otherwise, by or under any general or special law of this State, which is required by law to file articles of

association with the Secretary of State \* \* shall pay to the Secretary of State a franchise fee," etc.

The Grand River Valley Railroad Company is incorporated under a general law of this State; it is a new corporation; it is required by law to file articles of association with the Secretary of State; and it is therefore my opinion that it comes squarely within the provisions of the franchise law, and should be required to pay the franchise fee before its articles of association are filed in your office.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

---

*Public property—Taxation—County lands—Exemptions.*

Under the tax law of 1885, lands held by counties which were patented to them by the State for the building of a State road, are "public lands" within the meaning of the statute, and were exempt from taxation under that law.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, May 4, 1894.*

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor stating: "We find certain lands were returned delinquent for taxes for the year 1888, and sold to individuals under the law of 1889, and deeded. The lands were patented to Houghton county at the time of the assessment of said year's taxes. Therefore, we desire to ask if it is your opinion that the land referred to was exempt from taxation under the law of 1885 for said year 1888."

The first subdivision of section 3 of the tax law of 1885 (act 153) provides: "All public property belonging to the United States, to this State, or to any county, city, village, township or school district within this State, save lands purchased at tax sales, and still held by the State," shall be exempt from taxation.

The words "public property" are used to designate those things which belong to the public, or are the property of the entire community, as distinguished from that class of property which belongs to private individuals.

See Black's Law Dictionary, 963.

The only class of public property which is excepted from the first subdivision of section 3 of the tax law of 1885, is lands purchased at tax sales and still held by the State. That exception would not relate to lands which had been patented to the county for the construction of State roads.

It may be said to be a strange thing to find a county of the State owning a large tract of land, situated within the borders of some adjoining county. Still, this appears to be the case with the lands to which your letter refers. The act granting the lands to Houghton county was held constitutional and valid in the case of the People *vs.* The Commissioner of

the State Land Office, 23 Mich., 270, and the policy of such an exemption must rest entirely with the Legislature; and as the property comes clearly within the letter of the law exempting property owned by counties from taxation, I am of the opinion that the taxes assessed on such lands were unauthorized, said lands being exempt from taxation under the tax law of 1885.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

---

*Board of State Auditors—Power to make conveyances.*

The Board of State Auditors are essentially an auditing board, and they have no power, in the absence of a statute authorizing them so to do, to make a conveyance of lands on behalf of the State.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, May 5, 1894.*

HON. BOARD OF STATE AUDITORS, *Lansing, Mich.:*

GENTLEMEN—In reference to the application of Washington G. Wiley to your honorable board for a conveyance of certain lands heretofore deeded to the State of Michigan by one Edmund H. Hazleton and wife on December 29, 1871. It appears from the abstract inclosed that Mr. Hazleton deeded by quit claim the same lands to one Samuel H. Warren on the 10th day of January, 1856. Mr. Wiley is the holder of three several tax deeds for taxes of 1883, 1884, 1885, 1886 and 1888. The application is made on the ground that at the time Mr. Hazleton deeded to the State he had no title to the land, and could not therefore convey any to the State, and that as Mr. Wiley has title to the land by virtue of his tax deeds, the Board of State Auditors should convey to him the lands in question by quit claim deed.

Without considering the merits of the application, I am clearly of the opinion that you have no authority to comply with the petitioner's request. The Board of State Auditors are essentially an auditing board, created for the purpose of auditing and allowing claims against the State. They are not invested with any other power, except in cases expressly provided for in the constitution or statutes. The power to make deeds of conveyance for and on behalf of the State is not one granted to them, and they should not assume to exercise it.

The prayer of the petitioner should be denied.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*State Board of Review—Power to correct assessment—Authority to order refunding of taxes—Auditor General—Drawing money from the State treasury.*

The State Board of Review has no power to correct an assessment on telegraph and telephone lines, after the same has become a lien on the property.

Nor have they any power to order a refunding of taxes paid under a mistake, after the same has gone into the State treasury.

No money can be drawn out of the State treasury except upon an appropriation made by law, and the Auditor General cannot issue his warrant on the State treasury, except in pursuance of some statute of appropriation.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
Lansing, May 5, 1894.

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your favor stating that the State Board of Review, by mistake, assessed the Western Union Telegraph Company on 14,101 miles of construction, when in fact said company should not have been assessed on only 5,055.5 miles, thereby making an overcharge of taxes of \$3,119.70; that said company voluntarily paid the same, but afterwards discovered the mistake referred to, and has made application for a refunding of said overcharge; that said money has been paid into the State treasury, and asking my opinion if the Board of Review has a right to change the assessment, and order the tax refunded, after the same has been paid into the State treasury under the circumstances stated, is received and considered.

Two distinct questions are raised, (1) the power of the Board of Review, at this time, to correct the assessment, and (2) the power of the board to order a refunding.

First, Specific taxes become a lien against the property assessed on the first day of January following their assessment in July.

The question of the power of the Board of Review to correct an assessment after the tax has become a lien, was presented to this office in 1891, and I gave it as my opinion at that time that after the tax became a debt and a lien against the property of the company, that the Board of Review had no authority to change the tax or in any way waive the lien. (Attorney General's Report, 1892, page 86). I see no reason to change my opinion in this case, and must therefore hold that the State Board of Review has not, at this time, any authority to correct said assessment.

Second, Section 5 of article 14 of the constitution provides: "No money shall be paid out of the treasury, except in pursuance of appropriations made by law."

Section 274 of Howell's Statutes authorizes the Auditor General to examine and liquidate the claims of all persons against the State "in cases provided for by law" and give his warrant therefor. In claims which cannot be liquidated by him, or by the Board of State Auditors, without further legislative provision, he is required to examine and report the same, with the facts relating thereto, to the Legislature, with his opinion thereon.

Section 275 provides that when any amount is found due to any person, "for the payment whereof an appropriation shall have been made by law" the Auditor General may draw his warrant therefor.

The State Board of Review is a statutory board, and their powers are

necessarily confined to the provisions of the statute. There is no law which either expressly, or by implication, authorizes them to order money drawn from the treasury.

I understand that the mistake in the assessment was a clerical one, and the board are willing to correct it and refund the money if they have the power to do so, but under the constitution and laws of this State, I am very clearly of the opinion that they have no such power, and that the Auditor General would have no authority to draw his warrant on the treasury for such amount, even though the board should order it.

As was said in the case of *Shoemaker vs. Commissioners*, 36 Ind., 175, if an illegal tax is collected and paid into the State treasury, the State holds it in trust for the persons who paid it, and if it was voluntarily paid, the State becomes the equitable trustee. The court further held in that case, under a provision in their constitution, similar to ours, that "no money shall be paid out of the treasury except upon an appropriation made by law" that if the illegal tax has been paid, and it has gone into the State treasury, the persons paying it are the creditors of the State, and like other creditors of the State, their remedy is to ask the law-making power to make the proper appropriation.

It is well settled that taxes voluntarily paid cannot be recovered by the party paying them, but that question is not material in this case, inasmuch as the State cannot be sued. This is not a question of liability, but a question as to the power or authority of the board to order the excessive tax refunded, and the power or authority of the Auditor General to draw his warrant therefor.

Though it may be conceded that the tax is illegal and unjust, and the company should not in equity and good conscience be made to suffer for it, yet under the constitution and laws of this State, I am unable to see how the Board of Review, or Auditor General, has any power in the premises.

The remedy of the applicant is with the Legislature.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

---

*Game Warden—Expenses—Auditor General may allow.*

The Auditor General is authorized to audit the account of the State Game and Fish Warden for money necessarily expended for typewriting, correspondence and extra office work.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, May 9, 1894. }

HON. STANLEY W. TURNER, *Auditor General, Lansing, Mich.:*

DEAR SIR—In reply to your inquiry concerning account of the State Game and Fish Warden, would say that I am of the opinion that the law authorizes you to audit an account for money necessarily expended for typewriting, correspondence or extra office work.

If the Game and Fish Warden expends the money, and believes it necessary for him to do so in order to properly discharge the duties of his office, it seems to me that such a charge would be a valid one against the State.

Respectfully,  
A. A. ELLIS,  
*Attorney General.*

*Census enumerator—Appointment by old board—Officer cannot appoint himself to office—Authority of Governor to appoint.*

Although the incoming township board have qualified, yet if their predecessors are still in the discharge of their duties, an appointment to office made by the latter would be presumably valid.

An officer can never appoint himself to office, and an appointment under such circumstances is invalid.

The Governor can only appoint census enumerators in cases where the township board fail to appoint, or where the appointment made by them has been declared illegal by some court.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, May 12, 1894.*

HON. JOHN T. RICH, *Governor, Lansing, Mich.*

DEAR SIR—Your favor enclosing three letters from different parties as to the appointment of census enumerator, received and considered.

In reply to the question submitted by the letter of Mr. McBain, I would say that it appears from the letter referred to that the old township board appointed a census enumerator after their successors in office were elected and qualified.

It is my opinion that the old board could have appointed an enumerator at any time prior to their successors in office qualifying and entering upon the duties of their office, but after their successors qualified their term of office expired, and they became *functus officio*, and were deprived of all official power.

You will understand that the exact facts concerning this appointment should appear of record in the office of the township clerk, and it would be unsafe for me to give you a positive opinion as to whether or not the party appointed had any color of title, without a copy of the township records bearing on the question. If, however, the records show that the appointment was made by the old board while they were still exercising the duties of the office, the appointment would be good.

In reply to your second question, submitted by the letters of Mr. Whit-ing and Mr. Read, concerning the validity of the appointment of a census enumerator by the township board of Richland township, I would say: It appears by the letters that the supervisor voted for his son-in-law; the senior justice voted for his son; the junior justice voted for F. H. Read, the township clerk, and Mr. Read voted for himself, and that in this way the vote resulted in two for Read and one each for the son and son-in-law. The question is, was Read legally appointed.

It is my opinion that he was not. It is contrary to public policy to permit an officer having the power to appoint to an office, to exercise that power in his own interest, by appointing himself.

People vs. Thomas, 33 Barb., 287.

State vs. Hoyt, 2 Oreg., 246.

Read had no legal right to vote for himself, and while he might have held the office had he been elected by the other members of the board, he had no authority, as a member of the board, to exercise the power given in his own behalf, and the appointment as the vote stood was illegal.

But the question as to your right to make an appointment in these cases must be decided upon an entirely different basis. The statute only gives you authority to appoint where the board have neglected to appoint, and if these parties have entered upon the discharge of the duties of the office, they would be officers *de facto*.

If the reports of the appointments are regular on their faces, *prima facie*, they would be valid, and no vacancy would exist. They could only be removed by *quo warranto* proceedings, and you would not be authorized, under the statute, to make any appointment until the irregularity of the first appointment had been declared by the court. The official acts of an officer *de facto* are valid, and this would protect the public.

Respectfully submitted,

A. A. ELLIS,

Attorney General.

---

*Board of State Auditors—Void deeds of State—Refunding purchase price.*

Where the State gives a patent to lands to a private citizen, and it is afterwards discovered that, at the time the patent issued, the State had no title to the lands conveyed, the Board of State Auditors is authorized to allow a claim for the amount of the purchase price, upon the surrender and cancellation of the patent.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, May 15, 1894.

HON. BORAD OF STATE AUDITORS, *Lansing, Mich.* :

GENTLEMEN—Your favor enclosing correspondence *in re* claim of George D. Bouton, with a request for my opinion as to the power of the board in the matter, is received and considered.

It appears that the State of Michigan patented to the said Bouton on the 8th day of April, 1884, the east one-half of the northeast quarter, and the east half of the southeast quarter of section twenty-one (21) in township nine (9) north of range five (5), west. When these lands were patented to Mr. Bouton, it was supposed that the title was in the State under the Detroit & Milwaukee Railroad grant of June 3, 1856. It appears, however, that these same lands were patented by the general government to Catherine Post and Betsy Tubbs, March 10, 1852. Hence, as the act above referred to only granted to the State lands not otherwise appropriated, it

would appear conclusively that the State never had any title to the land in question, and the patent was therefore unauthorized; and Mr. Bouton is entitled to have the amount of his purchase money (\$16) refunded, upon the surrender and cancellation of his patent.

I have endorsed upon the patent a written surrender, which you should have Mr. Bouton sign before the claim is allowed.

Respectfully,

A. A. ELLIS,

*Attorney General.*

*Officers—Initials—Vacancies— Mistake in describing term of office—Effect.*

A person may run for office by his initials, and if he presents his official bond with his full name written in the body of the bond, the approving board has no authority to reject it for that reason.

Where a justice of the peace is on the ticket to fill vacancy, and by mistake the term of office is described as two years instead of three, there being no other vacancy to fill, he will be considered as elected for the term of three years. The description on the ballot cannot limit the term of office as fixed by the constitution and law.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
*Lansing, May 18, 1894.*

O. PALMER, *Prosecuting Attorney, Grayling, Mich.:*

DEAR SIR—Your favor of May 17, stating, "At the election in April for the township of Grove, the ticket for township clerk was printed 'P. W. Stephan,' and was elected, there being little or no opposition. His oath of office was duly filed, signed, 'P. W. Stephan.' His bond was presented, which had written in the body 'Peter W. Stephan,' and for that reason was rejected by the town board. On April 12, a new bond was presented with 'P. W. Stephan' in body and signature. The board ignored the bond, declared the office vacant, and appointed a clerk, who has qualified. Query—Has Mr. Stephan any standing in the case, and if so what action should he take to secure the office to which he was elected?"

"2. In 1893, a vacancy for justice of the peace for three years existed. By mistake of the board a justice was elected for two years' vacancy, and in 1894, the error being found, another justice was elected for two years' vacancy, making five justices now qualified in the township. The one elected in 1893 would now be on the township board, but the board refuse to recognize him. Will he not hold his office until his election be declared void by the court?" is received and considered.

In reply to your first question would say that I am of the opinion that P. W. Stephan is the legal clerk of your township, and is entitled to the office.

While the Supreme Court held at an early day that the votes for a person who ran for office, both by his initials and by his given or christian name, could not be added together in order to make a majority for such candidate, the court has never held that a person cannot run for office, if he so desires, by his initials. I have, therefore, no doubt but that Mr. Stephan was legally elected, and that the board had no legal right to refuse the bond because in the body of it he was described as "Peter W.

Stephan." The identity of the person being established, there could be no question but what the bond would be perfectly valid and fully protect the interests of the people.

For manner of proceeding in order to restore Mr. Stephan to his office, see section 8662 of Howell's Statutes, which authorizes the prosecuting attorney to file informations in the circuit court in the nature of *quo warranto*.

In reply to your second question, I would say that it would seem to me that the party who was elected justice of the peace in 1893, was fully authorized to perform the duties for the unexpired portion of the period of vacancy then existing in the township. I take it, of course, that there was but one vacancy to be filled, and that being so the mistake of the township board in preparing the ticket, it does not seem to me, should be held to affect the office in the least. The person was elected to fill the vacancy, and there being but one vacancy, no elector could be said to have been misled by the form of the ticket. It was clearly the will of the people that the party elected in the spring of 1893 should fill the vacancy for the unexpired portion of the term. The board could not limit the time, and any action on their part in that regard would be nugatory.

A similar question was before the Supreme Court, where the council of the city of Detroit were authorized to appoint an officer, and in the appointment they limited the term to a specified time, while the period for which the person should hold was fixed by the statute; and the Supreme Court held that that portion of the resolution limiting the time was void, and the person appointed was entitled to hold for the period mentioned in the statute.

See *Stadler vs. Detroit*, 13 Mich., 346.

The statute (section 683, Howell) expressly provides that when a person is elected to fill a vacancy he "shall hold during the unexpired portion of such term;" hence, in this case, I do not believe it lies within the power of the board to limit the term of the party elected in 1893, but think that such party is entitled to hold the office for the period of three years, and there being no vacancy in 1894, the party then running for office to fill a supposed vacancy has no right, title nor interest in the office.

Respectfully submitted,

A. A. ELLIS,  
Attorney General.

*Bridges on State roads—Incorporated villages—Townships—Liability to repair—Damages for injuries.*

A bridge situated within the limits of an incorporated village, but on a State road running through the village, and built originally by the township authorities, should be maintained and kept in repair by the township, and damages sustained by any person by reason of the unsafe condition of the bridge would be a charge against the township.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, May 19, 1894.

W. H. HAMMOND, *President, Luther, Mich.:*

DEAR SIR—Your favor of May 17, stating that the State road from Grand Rapids to Traverse City passes through the village of Luther; that

a bridge on the aforesaid road, which was constructed by the township of Ellsworth before the village was incorporated, is within the corporate limits of the village, and that at present such bridge is in an unsafe condition; that the highway commissioner refuses to repair it, he claiming that it is the duty of the village to keep the bridge in repair; that the village authorities claim that it is the duty of the township to repair the bridge, and asking my opinion as to whether the keeping of the bridge in repair is a township or village charge, is received and considered.

The village of Luther is organized under local act number 274 of 1893. Section 6 of the act of incorporation provides: "The said village of Luther shall in all things not herein otherwise provided, be governed, and its powers defined, by an act entitled 'An act granting and defining the powers and duties of incorporated villages, approved April 1, 1875, and the amendments thereto, the same being chapter 81 of Howell's Annotated Statutes.'"

Act 274 of 1893, above mentioned, is silent as to streets, highways, and bridges; and hence, we must look to chapter 81 of Howell's Statutes referred to, in order to learn the duties and responsibilities of the village and township in that regard.

Section 2853 of Howell's Statutes, which is a part of said chapter 81, provides: "That the bridges within the limits of any village incorporated under this act, in the highways leading into or through said village, which have been, or shall hereafter be laid out by the commissioners of highways of the township or townships in which said village may be located or established by any other lawful authority, except the authority of such village, shall be built, controlled and kept in repair by the township or townships in which they may be located, the same as if said village were not incorporated, and all the other bridges in said village shall be built, controlled and kept in repair by said village."

It will be observed that the above section provides that townships shall keep in repair, not only the bridges within the limits of a village on highways running through said village, which have been laid out by highway commissioners, but also the bridges on highways which may be "located or established by any other lawful authority except the authority of the village."

A State road was established by the lawful authority of the State; hence, it comes within the plain provisions of the statute; and inasmuch as the State road runs through the village, it is the duty of the township to keep in repair all bridges on such highway within the corporate limits.

The object of the section above quoted is to require the township to be responsible for all bridges on the general highways of the township, and to make the village responsible for all those bridges which are constructed upon the village streets, which have been laid out by village authority, simply for the use of the inhabitants of the village and such others as desire to travel over them in passing through the village streets.

Act number 264 of the Public Acts of 1887, which gives a right of action to any person who is injured, either in his person or property on the public highways by reason of a defect in a bridge, expressly limits the liability to "the township, village or city, whose duty it is to keep the bridge in repair," and under the circumstances mentioned in your letter, in case an injury should occur to any person by reason of a defect in such bridge, the

loss would fall upon the township of Ellsworth, which is legally responsible for the construction and repair of the bridge.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Sureties on official bonds—Competency.*

A person may act as surety on an official bond, though he is a member of a board to whom said bond is running, provided the bond is to be approved by some other official.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, May 28, 1894.*

HON. JOHN T. RICH, *Governor, Lansing, Mich.:*

DEAR SIR—Your favor enclosing the bond of the secretary and treasurer of the Board of Building Commissioners of the Upper Peninsula Asylum for the Insane, and asking my opinion as to whether this bond, one of the sureties on the same being a member of the Board of Building Commissioners, is a valid one, is received.

In reply would say that if the bond was to be approved by the Board of Building Commissioners, the objection that one of the board was personally interested in the bond as a surety, might be a legal objection to its approval by the board.

*Stevenson vs. Bay City, 26 Mich., 44.*

But the bond is to be approved by the Governor under the statute, and a member of the Board of Building Commissioners has no official duty to perform in relation to it.

I am therefore of the opinion that the fact that a member of the board is a surety on the bond does not invalidate the bond in the least.

Respectfully,

A. A. ELLIS,  
*Attorney General.*

*Vacancies—Regents of the University—Length of appointment.*

Under the constitution, a vacancy in the office of Regent of the University, should be filled by appointment of the Governor for the entire portion of the unexpired term.

STATE OF MICHIGAN, }  
ATTORNEY GENERAL'S OFFICE, }  
*Lansing, June 1, 1894.*

HON. JOHN T. RICH, *Governor, Lansing, Mich.:*

DEAR SIR—Your favor of May 28, stating that a question has been raised as to the length of time for which an appointment should be made to fill the vacancy in the office of Regent of the University, occasioned by

the death of Hon. Henry Howard, that is to say—whether you should appoint for the unexpired portion of the term, or until the next general election, is received and considered.

In reply would say that I find that the statutes of the State concerning the filling of a vacancy in the office of Regent of the University is in conflict with section 6, article 13 of the constitution.

The constitution provides that "When a vacancy shall occur in the office of Regent, it shall be filled by appointment of the Governor."

Under the plain terms of the constitution, the appointment should be made to fill the entire portion of the unexpired term.

Respectfully submitted,

A. A. ELLIS,  
Attorney General.

*First and second sentences—New trial—Serving time in other prisons—Good time.*

Where a prisoner gets a new trial, his first imprisonment cannot be considered in computing his good time under his re-sentence.

The fact that a man has served a term in the Detroit House of Correction cannot be considered in computing his good time in other prisons.

The fact that a prisoner has served in any other prison of the State cannot be considered in computing his good time.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, June 29, 1894. }

F. M. DOUGLASS, Clerk Ionia House of Correction, Ionia, Mich.:

DEAR SIR—Your favor submitting the following questions received:

1. "In case a man is convicted of a crime and sentenced to this prison, serves a part of his term, then gets a new trial, is again convicted and sentenced again for the same offense, is the last conviction his first or second, under section 33, act 118, Laws of 1893."

In reply would say that the first conviction being invalid, it could not be counted against him, and you would have no authority to consider it in making your allowance for good time.

2. "A man serves a term in the Detroit House of Correction, is then convicted of another crime and sentenced to this prison. Is the sentence here the first or second, under the section above referred to."

No deduction could be made from a prisoner's good time because he had formerly served a term in the Detroit House of Correction. That institution is not recognized by act 118, Laws of 1893.

3. "Under the proviso in section 33 referred to, does it mean that a man shall be serving his second or third term in this prison, or any one of the three prisons of the State."

I am of the opinion that you cannot take into consideration, in allowing good time, the fact that a prisoner had served a term in some of the other prisons named in act 118, but the right to good time depends upon the fact of his being confined in the particular prison to which he is sentenced by the court.

This seems to be the doctrine of *in re Canfield*, 57 N. W. Rep., 807.

Respectfully,

A. A. ELLIS,  
Attorney General.

# SCHEDULE H.

| Charged with.  | Result.        |                |                |                                    |                    |                                  |
|--|----------------|----------------|----------------|------------------------------------|--------------------|----------------------------------|
|  | No. presented. | No. convicted. | No. acquitted. | No. dismissed on payment of costs. | No. nolle prossed. | No. of escape, settlements, etc. |
| Abandoning infant.....                                       | 2              | 1              | 1              |                                    |                    |                                  |
| Abduction.....   | 7              | 2              |                |                                    | 2                  | 1                                |
| Adultery.....  | 62             | 9              | 5              | 12                                 | 12                 | 3                                |
| Affray.....  | 3              |                |                |                                    | 2                  | 1                                |
| Aiding prisoners to escape.....                              | 2              | 2              |                |                                    |                    |                                  |
| Allowing vicious animal to run at large.....                 | 3              | 1              | 1              |                                    | 1                  |                                  |
| Arson.....   | 34             | 7              | 6              |                                    | 6                  | 13                               |
| Assault (simple).....  | 61             | 38             | 5              | 2                                  | 8                  | 5                                |
| Assault (felonious).....                                     | 9              | 4              |                |                                    | 3                  | 2                                |
| Assault and battery.....                                     | 3,077          | 1,974          | 530            | 290                                | 169                | 45                               |
| Assault with intent to do great bodily harm, etc.....        | 124            | 39             | 10             | 1                                  | 27                 | 45                               |
| Assault with intent to murder.....                           | 34             | 8              | 5              |                                    | 9                  | 12                               |
| Assault with intent to commit larceny.....                   | 1              |                | 1              |                                    |                    |                                  |
| Assault with intent to commit robbery.....                   | 12             | 5              | 2              | 2                                  |                    | 2                                |
| Assault with intent to maim.....                             | 1              |                | 2              | 1                                  |                    |                                  |
| Assault with intent to commit rape.....                      | 34             | 11             | 3              |                                    | 3                  | 16                               |
| Attempt to commit abortion.....                              | 1              |                |                |                                    | 1                  |                                  |
| Attempt to commit rape.....                                  | 7              | 2              | 1              |                                    | 2                  | 2                                |
| Attempt to extort property.....                              | 1              |                |                | 1                                  |                    |                                  |
| Attempt to commit burglary.....                              | 1              |                |                |                                    | 1                  |                                  |
| Bastardy.....  | 142            | 32             | 8              | 23                                 | 16                 | 16                               |
| Bench warrant.....   | 2              |                |                |                                    |                    | 52                               |
| Bigamy.....  | 7              | 3              | 2              | 1                                  | 1                  |                                  |
| Blasphemy.....   | 7              | 6              | 1              |                                    |                    |                                  |
| Breach of the peace.....                                     | 55             | 45             | 5              | 3                                  | 1                  | 1                                |
| Breaking boat fastenings.....                                | 4              | 2              | 2              |                                    |                    |                                  |
| Breaking jail.....   | 1              |                |                |                                    |                    | 1                                |
| Breaking and entering dwelling in night time.....            | 8              | 4              | 1              |                                    | 2                  |                                  |
| Breaking and entering dwelling in day time.....              | 28             | 11             | 2              |                                    | 3                  | 6                                |
| Breaking and entering store in day time.....                 | 1              | 1              |                |                                    |                    | 1                                |
| Breaking and entering school house with intent, etc.....     | 1              |                |                |                                    | 1                  |                                  |
| Breaking and entering railroad car.....                      | 41             | 41             |                |                                    |                    |                                  |
| Breaking and entering warehouse with intent, etc.....        | 4              | 4              |                |                                    |                    |                                  |
| Breaking and entering office in night time.....              | 1              |                |                | 1                                  |                    |                                  |
| Breaking and entering saloon in night time.....              | 6              | 5              |                |                                    | 1                  |                                  |
| Breaking and entering store in night time.....               | 25             | 19             | 1              |                                    | 1                  | 4                                |
| Burglary.....  | 304            | 218            | 20             |                                    | 21                 | 42                               |
| Careless use of firearms.....                                | 16             | 12             |                | 1                                  | 2                  |                                  |
| Carnal knowledge of girl between 14 and 16 years of age..... | 6              | 4              |                |                                    | 1                  | 1                                |

## SCHEDULE H.—CONTINUED.

| Charged with.   | Result.         |                |                |                                    |                    |                                |                                   |
|---|-----------------|----------------|----------------|------------------------------------|--------------------|--------------------------------|-----------------------------------|
|   | No. prosecuted. | No. convicted. | No. acquitted. | No. dismissed on payment of costs. | No. nolle prossed. | No. discharged on examination. | No. of escapes, settlements, etc. |
| Carrying concealed weapons .....                              | 119             | 101            | 5              | 3                                  | 6                  | 4                              | 2                                 |
| Carrying dynamite aboard cars .....                           | 4               | 2              | —              | —                                  | —                  | —                              | —                                 |
| Circulating counterfeit money .....                           | 6               | 2              | 1              | —                                  | 1                  | 1                              | 1                                 |
| Conspiracy .....  | 11              | 4              | 4              | 1                                  | 2                  | —                              | —                                 |
| Contempt of court .....                                       | 13              | 13             | —              | —                                  | —                  | —                              | —                                 |
| Compounding a felony .....                                    | 1               | 1              | —              | —                                  | —                  | —                              | —                                 |
| Criminal negligence .....                                     | 1               | —              | 1              | —                                  | —                  | —                              | —                                 |
| Cruelty to animals .....                                      | 145             | 93             | 15             | 19                                 | 12                 | 4                              | 2                                 |
| Defrauding hotel keeper .....                                 | 81              | 51             | 2              | 10                                 | 9                  | 3                              | 6                                 |
| Disorderly, classified as follows:                            |                 |                |                |                                    |                    |                                |                                   |
| (a) Common prostitutes .....                                  | 179             | 152            | 10             | 3                                  | 11                 | —                              | 3                                 |
| (b) Drunks .....  | 2,182           | 2,118          | 11             | 17                                 | 7                  | 24                             | 5                                 |
| (c) Drunk and disorderly .....                                | 673             | 686            | 16             | 15                                 | 1                  | 2                              | 3                                 |
| (d) Drunkards and tipplers .....                              | 116             | 103            | 2              | 1                                  | 5                  | 4                              | 1                                 |
| (e) Fortune tellers .....                                     | 2               | 2              | —              | —                                  | —                  | —                              | —                                 |
| (f) Gamesters and keepers of gaming rooms .....               | 22              | 14             | —              | 2                                  | 1                  | 5                              | 1                                 |
| (g) Keepers of bawdy houses .....                             | 79              | 71             | —              | 6                                  | —                  | —                              | —                                 |
| (h) Non-support of family .....                               | 161             | 61             | 13             | 52                                 | 18                 | 13                             | 4                                 |
| (i) Selling liquors to drunkards .....                        | 1               | —              | —              | —                                  | —                  | —                              | 1                                 |
| (j) Unclassified .....  | 6,160           | 5,896          | 215            | 12                                 | 11                 | 11                             | 15                                |
| (k) Vagrants .....  | 1,355           | 1,301          | 6              | 3                                  | 24                 | 13                             | 8                                 |
| Distributing obscene literature .....                         | 8               | 8              | —              | —                                  | —                  | —                              | —                                 |
| Distributing obscene pictures .....                           | 2               | 2              | —              | —                                  | —                  | —                              | —                                 |
| Disturbing public meeting .....                               | 7               | 6              | —              | —                                  | —                  | —                              | 1                                 |
| Disturbing public school .....                                | 2               | 1              | —              | 1                                  | —                  | —                              | —                                 |
| Disturbing religious meeting .....                            | 67              | 54             | 8              | 2                                  | 3                  | —                              | —                                 |
| Drunk in public places .....                                  | 279             | 270            | 2              | 7                                  | —                  | —                              | —                                 |
| Embezzlement .....  | 91              | 24             | 16             | 5                                  | 14                 | 27                             | 4                                 |
| Enticing away female child for purposes of prostitution ..... | 9               | 3              | —              | —                                  | 1                  | 4                              | 1                                 |
| Enticing female to enter house of ill-fame .....              | 1               | 1              | —              | —                                  | —                  | —                              | —                                 |
| Exposing poisonous substances .....                           | 1               | —              | 1              | —                                  | —                  | —                              | —                                 |
| False imprisonment .....                                      | 1               | —              | —              | —                                  | —                  | 1                              | —                                 |
| False pretences .....   | 108             | 25             | 11             | 9                                  | 25                 | 29                             | 8                                 |
| Fast driving over bridge .....                                | 5               | 5              | —              | —                                  | —                  | —                              | —                                 |
| Fraudulent disposal of chattel mortgaged property .....       | 38              | 8              | 5              | 8                                  | 5                  | 7                              | 5                                 |
| Fraudulent removal of goods under contract of purchase .....  | 4               | 3              | —              | 1                                  | —                  | —                              | —                                 |
| Forgery .....   | 51              | 29             | 4              | 8                                  | 7                  | 3                              | —                                 |
| Frequenting houses of ill-fame .....                          | 2               | 2              | —              | —                                  | —                  | —                              | —                                 |
| Furnishing liquor to prisoners .....                          | 1               | 1              | —              | —                                  | —                  | —                              | —                                 |
| Gambling .....  | 15              | 7              | 3              | 2                                  | 1                  | —                              | 2                                 |
| Having in possession lottery tickets .....                    | 3               | 3              | —              | —                                  | —                  | —                              | —                                 |
| Hunting on enclosed premises .....                            | 3               | 3              | —              | —                                  | —                  | —                              | —                                 |
| Illegal issuing of township orders .....                      | —               | —              | —              | —                                  | —                  | 1                              | —                                 |
| Imputing want of chastity to a female .....                   | 5               | 2              | 1              | —                                  | 2                  | —                              | —                                 |
| Incest .....  | 9               | 4              | —              | —                                  | 4                  | 1                              | —                                 |
| Indecent assault .....  | 3               | 1              | 1              | —                                  | —                  | —                              | 1                                 |
| Indecent exposure of person .....                             | 32              | 19             | 4              | 2                                  | 2                  | 3                              | 2                                 |
| Indecent liberties with male child .....                      | 3               | 1              | —              | —                                  | 2                  | —                              | —                                 |
| Indecent liberties with female child .....                    | 9               | 5              | 2              | —                                  | 2                  | —                              | —                                 |
| Jumping on moving train .....                                 | 61              | 53             | 1              | 6                                  | 1                  | —                              | 4                                 |
| Juvenile disorderly .....                                     | 87              | 63             | 5              | 8                                  | 1                  | 6                              | —                                 |
| Keeping house of ill fame .....                               | 35              | 28             | —              | —                                  | 6                  | 1                              | 5                                 |

## ANNUAL REPORT OF THE

## SCHEDULE H.—CONTINUED.

| Charged with.                                 | Result.         |                |                |                                    |                    |                                |                                   |
|---|-----------------|----------------|----------------|------------------------------------|--------------------|--------------------------------|-----------------------------------|
|   | No. prosecuted. | No. convicted. | No. acquitted. | No. dismissed on payment of costs. | No. nolle prossed. | No. discharged on examination. | No. of escapes, settlements, etc. |
| <b>Larceny, classified as follows:</b>        |                 |                |                |                                    |                    |                                |                                   |
| (a) At a fire                                 | 1               | 1              |                |                                    |                    |                                |                                   |
| (b) From building in day time                 | 5               | 4              |                |                                    | 1                  |                                |                                   |
| (c) From dwelling house in day time           | 52              | 38             | 3              |                                    | 6                  | 5                              |                                   |
| (d) From office in day time                   | 2               | 2              |                |                                    |                    |                                |                                   |
| (e) From the person                           | 97              | 44             | 5              | 4                                  | 14                 | 28                             | 2                                 |
| (f) From railroad car                         | 8               | 7              |                |                                    |                    |                                | 1                                 |
| (g) From store in day time                    | 27              | 18             | 3              |                                    | 4                  | 2                              |                                   |
| (h) From warehouse                            | 1               | 1              |                |                                    |                    |                                |                                   |
| (i) Of horse                                  | 6               | 2              | 1              | 1                                  | 1                  |                                | 1                                 |
| (j) Of less than \$25.00                      | 1,682           | 1,161          | 263            | 76                                 | 55                 | 108                            | 19                                |
| (k) Of more than \$25.00                      | 139             | 82             | 8              | 1                                  | 16                 | 31                             | 1                                 |
| (l) Of timber                                 | 2               | 1              |                | 1                                  |                    |                                |                                   |
| (m) Unclassified                              | 1,089           | 749            | 120            | 32                                 | 104                | 51                             | 33                                |
| Leaving building for gambling purposes        | 1               | 1              |                |                                    |                    |                                |                                   |
| Leaving building for purposes of prostitution | 3               |                | 2              |                                    |                    | 2                              | 1                                 |
| Lewd and lascivious cohabitation              | 14              | 4              |                | 2                                  | 3                  | 3                              |                                   |
| Libel   | 4               | 1              | 1              | 1                                  |                    | 1                              |                                   |
| Maintaining lottery                           | 3               | 1              |                |                                    | 1                  |                                | 1                                 |
| Maintaining nuisance                          | 3               | 2              |                | 1                                  |                    |                                |                                   |
| Malicious injury to property                  | 372             | 191            | 63             | 34                                 | 57                 | 19                             | 8                                 |
| Malicious killing of animals                  | 10              | 3              | 3              |                                    | 3                  | 1                              |                                   |
| Malicious mischief                            | 5               |                |                |                                    | 5                  |                                |                                   |
| Malicious threats                             | 63              | 32             | 18             | 6                                  | 8                  | 2                              | 2                                 |
| Manslaughter                                  | 8               | 2              | 4              |                                    |                    | 2                              |                                   |
| Mayhem  | 3               | 1              | 1              |                                    | 1                  |                                |                                   |
| Misdemeanor                                   | 5               | 5              |                |                                    |                    |                                |                                   |
| Misfeasance in office                         | 1               |                | 1              |                                    |                    |                                |                                   |
| Murder  | 31              | 18             | 9              |                                    | 2                  | 2                              |                                   |
| Neglecting to bury dead animal                | 3               | 2              | 1              |                                    |                    |                                |                                   |
| Neglecting to cut Canada thistle              | 1               |                | 1              |                                    |                    |                                |                                   |
| Neglecting to destroy diseased fruit trees    | 5               | 2              |                |                                    |                    |                                | 3                                 |
| Obstructing drain                             | 2               | 2              |                |                                    |                    |                                |                                   |
| Obstructing railroad track                    | 11              | 6              | 2              |                                    | 2                  | 1                              |                                   |
| Peddling without license                      | 6               | 3              | 1              |                                    | 1                  | 1                              |                                   |
| Perjury                                       | 23              | 4              | 10             |                                    | 2                  | 6                              | 1                                 |
| Personating an officer                        | 2               |                | 2              |                                    |                    |                                |                                   |
| Poisoning animals                             | 3               |                | 2              |                                    | 1                  |                                |                                   |
| Printing obscene literature                   | 1               | 1              |                |                                    |                    |                                |                                   |
| Printing obscene picture for circulation      | 1               |                |                |                                    |                    |                                | 1                                 |
| Prize fighting                                | 1               | 1              |                |                                    |                    |                                |                                   |
| Rape  | 55              | 11             | 12             | 15                                 | 10                 | 7                              |                                   |
| Receiving stolen property                     | 70              | 28             | 11             | 1                                  | 11                 | 19                             |                                   |
| Refusing to assist officer                    | 2               | 1              |                |                                    | 1                  |                                |                                   |
| Resisting an officer                          | 26              | 9              | 3              |                                    | 4                  | 4                              | 6                                 |
| Rioting                                       | 3               | 1              |                |                                    | 1                  | 1                              |                                   |
| Robbery                                       | 68              | 27             | 10             | 1                                  | 7                  | 16                             | 2                                 |
| Search warrant                                | 35              | 16             | 3              |                                    |                    |                                | 16                                |
| Seduction                                     | 24              | 3              | 4              | 3                                  | 2                  | 4                              | 8                                 |
| Selling diseased meat                         | 1               |                |                |                                    | 1                  |                                |                                   |
| Selling oleomargarine for butter              | 2               | 2              |                |                                    |                    |                                |                                   |
| Slander                                       | 238             | 117            | 61             | 26                                 | 25                 | 6                              | 3                                 |
| Sodomy  | 4               |                | 3              |                                    |                    |                                |                                   |
| Stealing ride on railroad train               | 35              | 31             |                |                                    | 4                  |                                |                                   |
| Surety to keep peace                          | 42              | 29             | 3              | 3                                  | 3                  | 4                              |                                   |

## SCHEDULE H.—CONCLUDED.

| Charged with.  | Result.         |                |                |                                    |                    |                                |                                   |
|--|-----------------|----------------|----------------|------------------------------------|--------------------|--------------------------------|-----------------------------------|
|  | No. prosecuted. | No. convicted. | No. acquitted. | No. dismissed on payment of costs. | No. nolle prossed. | No. discharged on examination. | No. of escapes, settlements, etc. |
| Truancy  | 125             | 92             | 7              | 2                                  | 18                 | 3                              | 3                                 |
| Turning railroad switch                                    | 1               | 1              |                |                                    |                    |                                |                                   |
| Unhitching horse and driving away without consent of owner | 21              | 15             | 4              | 2                                  |                    |                                |                                   |
| Unlawful practice of dentistry                             | 3               | 2              |                |                                    | 1                  |                                |                                   |
| Unlawful practice of medicine                              | 4               | 1              |                |                                    | 1                  |                                | 1                                 |
| Using counterfeit labels                                   | 1               | 1              | 1              |                                    |                    |                                |                                   |
| Uttering forged instrument                                 | 13              | 6              |                |                                    | 2                  | 4                              | 1                                 |
| Violation of election law                                  | 6               |                | 1              |                                    | 3                  | 2                              |                                   |
| Violation of game law, classified as follows:              |                 |                |                |                                    |                    |                                |                                   |
| (a) Harassing deer   | 3               |                | 3              |                                    |                    |                                |                                   |
| (b) Killing deer out of season                             | 9               | 8              | 1              |                                    |                    |                                |                                   |
| (c) Killing ducks  | 1               | 1              |                |                                    |                    |                                |                                   |
| (d) Killing partridge out of season                        | 4               | 4              |                |                                    |                    |                                |                                   |
| (e) Shipping deer out of season                            | 1               |                |                |                                    | 1                  |                                |                                   |
| (f) Shipping fish out of State                             | 1               | 1              |                |                                    |                    |                                |                                   |
| (g) Unclassified   | 128             | 83             | 18             | 11                                 | 5                  | 9                              | 2                                 |
| (h) Unlawful killing of fish                               | 102             | 81             | 8              | 2                                  | 5                  | 1                              | 5                                 |
| Violation of health law                                    | 13              | 2              | 1              |                                    | 9                  | 1                              |                                   |
| Violation of liquor law, classified as follows:            |                 |                |                |                                    |                    |                                |                                   |
| (a) Bar obstructions                                       | 53              | 10             | 8              | 2                                  | 33                 |                                |                                   |
| (b) Keeping open on holiday                                | 73              | 31             | 16             | 1                                  | 4                  | 21                             |                                   |
| (c) Keeping open on election day                           | 3               | 2              | 1              |                                    |                    |                                |                                   |
| (d) Keeping open on Sunday                                 | 49              | 39             | 1              | 2                                  | 4                  | 3                              |                                   |
| (e) Keeping open after hours                               | 59              | 28             | 1              | 3                                  | 8                  | 23                             | 1                                 |
| (f) Selling to habitual drunkard                           | 2               |                |                | 2                                  |                    |                                |                                   |
| (g) Selling to intoxicated person                          | 12              |                | 2              |                                    |                    |                                |                                   |
| (h) Selling to minors                                      | 17              | 8              | 8              |                                    | 3                  | 8                              |                                   |
| (i) Selling without payment of tax                         | 861             | 134            | 11             | 162                                | 13                 | 37                             | 4                                 |
| (j) Unclassified   | 384             | 231            | 20             | 34                                 | 49                 | 44                             | 6                                 |
| (k) Unlawful sales by druggists                            | 7               | 1              | 2              | 1                                  | 3                  |                                |                                   |
| Violation local option law                                 | 23              | 20             | 3              |                                    |                    |                                |                                   |
| Violation of oil inspection law                            | 3               | 3              |                |                                    |                    |                                |                                   |
| Violation of pharmacy law                                  | 8               | 5              |                |                                    | 2                  | 1                              |                                   |
| Violation of Sunday laws                                   | 20              | 14             | 3              | 1                                  | 1                  | 1                              |                                   |
| Violation of tobacco law                                   | 9               | 8              |                |                                    | 1                  |                                |                                   |
| Willful trespass   | 119             | 68             | 16             | 18                                 | 7                  | 8                              | 2                                 |
| * Total  | 22,349          | 17,349         | 1,788          | 972                                | 992                | 915                            | 883                               |

\* On page 4 of the report it is stated that the number of prosecutions for the present fiscal year exceed those of the former year by 3,239 and that the number of convictions is 2.3 per cent more than in 1893. This is not exactly correct, as that computation was made before the reports from Alpena and Antrim counties were received. The exact figures are 3,375 more prosecutions, with 2.27 per cent more convictions.

# SCHEDULE I.

| County.            | Prosecuting attorney.      | Postoffice.           | No. prosecuted. | No. convicted. | No. acquitted. | No. dismissed on payment of costs. | No. nolle prossed. | No. discharged on examination. | No. settled or otherwise compromised. |
|--------------------|----------------------------|-----------------------|-----------------|----------------|----------------|------------------------------------|--------------------|--------------------------------|---------------------------------------|
| Alcona .....       | Osmond H. Smith.....       | Harrisville .....     | 81              | 21             | 5              | 4                                  | 1                  | -----                          | -----                                 |
| Alger .....        | Henry B. Freeman.....      | An Train .....        | 18              | 15             | 2              | -----                              | 1                  | -----                          | -----                                 |
| Allegan .....      | Fidus E. Fish .....        | Allegan .....         | 181             | 130            | 15             | 4                                  | 14                 | 6                              | 12                                    |
| Alpena .....       | Lemuel G. Dafoe.....       | Alpena .....          | 72              | 19             | 30             | 22                                 | -----              | -----                          | 1                                     |
| Antrim .....       | Roswell Leavitt.....       | Bellaire .....        | 64              | 38             | 14             | -----                              | 12                 | 4                              | 1                                     |
| Arenac .....       | Sanford E. Hayes.....      | Standish .....        | 50              | 23             | 14             | 8                                  | 1                  | 2                              | 2                                     |
| Baraga .....       | Elmer E. Halsey.....       | L'Anse .....          | 53              | 39             | 5              | 2                                  | 3                  | 2                              | 2                                     |
| Barry .....        | James A. Sweezey.....      | Hastings .....        | 74              | 56             | 5              | 3                                  | 4                  | 2                              | 4                                     |
| Bay .....          | Lee E. Joelyn .....        | Bay City.....         | 624             | 417            | 100            | 71                                 | 20                 | 15                             | 1                                     |
| Benzie .....       | Dwight G. F. Warner.....   | Frankfort .....       | 36              | 27             | 4              | 2                                  | -----              | 2                              | 1                                     |
| Berrien .....      | Nathaniel A. Hamilton..... | St. Joseph.....       | 309             | 232            | 14             | 5                                  | 16                 | 41                             | 1                                     |
| Branch .....       | William H. Compton.....    | Coldwater .....       | 88              | 60             | 16             | 4                                  | 6                  | -----                          | 2                                     |
| Calhoun .....      | O. Scott Clark .....       | Battle Creek.....     | 482             | 381            | 27             | 8                                  | 24                 | 23                             | 19                                    |
| Case .....         | Charles E. Sweet.....      | Dowagiac .....        | 203             | 160            | 6              | 16                                 | 7                  | 2                              | 12                                    |
| Charlevoix .....   | Frederick W. Mayne.....    | Charlevoix .....      | 28              | 19             | 2              | -----                              | 3                  | 1                              | 3                                     |
| Cheboygan .....    | Crawford S. Reilly.....    | Cheboygan .....       | 54              | 28             | 13             | 1                                  | 3                  | 7                              | 2                                     |
| Chippewa .....     | John Huret .....           | Sault Ste. Marie..... | 131             | 82             | 16             | 4                                  | 17                 | -----                          | 12                                    |
| Clare .....        | Henry K. Wickham.....      | Harrison .....        | 52              | 40             | 4              | 1                                  | 5                  | 1                              | 1                                     |
| Clinton .....      | Wm. A. Norton .....        | St. Johns .....       | 81              | 69             | 1              | 1                                  | 2                  | 6                              | 2                                     |
| Crawford .....     | O. Palmer .....            | Grayling .....        | 33              | 19             | 3              | 9                                  | 1                  | -----                          | 1                                     |
| Delta .....        | Ira C. Jennings.....       | Escanaba .....        | 66              | 43             | 5              | -----                              | 9                  | 4                              | 5                                     |
| Dickinson .....    | Fabian J. Trudell.....     | Iron Mountain.....    | 98              | 69             | 20             | 8                                  | 1                  | -----                          | -----                                 |
| Eaton .....        | Lyman H. McCall.....       | Charlotte .....       | 688             | 560            | 17             | 10                                 | 45                 | 2                              | 4                                     |
| Emmet .....        | John G. Hill .....         | Petoskey .....        | 30              | 26             | 4              | -----                              | -----              | -----                          | -----                                 |
| Genesee .....      | George F. Brown.....       | Flint .....           | 126             | 104            | 4              | 2                                  | 1                  | 12                             | 8                                     |
| Gladwin .....      | Fern C. Smith .....        | Gladwin .....         | 19              | 14             | 2              | 1                                  | 2                  | -----                          | -----                                 |
| Gogebic .....      | Charles M. Howell.....     | Bessemer .....        | 683             | 592            | 48             | 15                                 | 18                 | 10                             | 7                                     |
| Gd. Traverse ..... | William H. Foster.....     | Traverse City.....    | 181             | 139            | 4              | 3                                  | 9                  | 6                              | 7                                     |
| Gratiot .....      | William A. Leet .....      | Ithaca .....          | 85              | 71             | 4              | -----                              | 4                  | -----                          | -----                                 |
| Hillsdale .....    | Guy M. Chester.....        | Hillsdale .....       | 134             | 99             | 19             | 8                                  | 9                  | -----                          | 4                                     |
| Houghton .....     | Albert T. Streeter.....    | Calumet .....         | 246             | 197            | 19             | 4                                  | 8                  | 10                             | 8                                     |
| Huron .....        | John F. Murphy.....        | Sand Beach.....       | 35              | 26             | 4              | -----                              | 1                  | 2                              | 2                                     |
| Ingham .....       | Leonard B. Gardner.....    | Lansing .....         | 954             | 759            | 49             | 3                                  | 2                  | 75                             | 66                                    |
| Ionia .....        | Royal A. Hawley.....       | Ionia .....           | 543             | 510            | 12             | 4                                  | 14                 | 3                              | -----                                 |
| Iosco .....        | Main J. Connine.....       | Oscoda .....          | 53              | 33             | 7              | 10                                 | 1                  | 1                              | 1                                     |
| Iron .....         | Michael H. Moriarity.....  | Crystal Falls.....    | 55              | 28             | 7              | 3                                  | 9                  | 6                              | 2                                     |
| Isabella .....     | Herbert A. Sanford.....    | Mt. Pleasant.....     | 106             | 44             | 14             | 8                                  | 31                 | -----                          | 9                                     |
| Ile Royal *        | -----                      | -----                 | -----           | -----          | -----          | -----                              | -----              | -----                          | -----                                 |
| Jackson .....      | Elmer Kirkby.....          | Jackson .....         | 632             | 458            | 20             | 49                                 | 75                 | 20                             | 10                                    |
| Kalamazoo .....    | Alfred S. Frost.....       | Kalamazoo .....       | 432             | 370            | 12             | 9                                  | 27                 | 4                              | 10                                    |

## SCHEDULE I.—CONCLUDED.

| County.           | Prosecuting attorney.      | Postoffice.       | No. prosecuted. | No. convicted. | No. acquitted. | No. dismissed on payment of costs. | No. nolle prossed. | No. discharged on examination. | No. settled or otherwise compromised. |
|-------------------|----------------------------|-------------------|-----------------|----------------|----------------|------------------------------------|--------------------|--------------------------------|---------------------------------------|
| Kalkaska.....     | Cassius M. Phelps.....     | Kalkaska.....     | 10              | 9              | —              | —                                  | 1                  | —                              | —                                     |
| Kent.....         | Alfred Welcott.....        | Grand Rapids..... | 629             | 401            | 63             | 13                                 | 62                 | 57                             | 33                                    |
| Keweenaw.....     | Willard E. Gray.....       | Lake Linden.....  | 1               | —              | —              | —                                  | —                  | —                              | 1                                     |
| Lake.....         | Chas. D. Barghoorn.....    | Luther.....       | 48              | 38             | 1              | 6                                  | 2                  | 1                              | —                                     |
| Lapeer.....       | Wm. E. Brown.....          | Lapeer.....       | 217             | 161            | 15             | 3                                  | 80                 | 6                              | 2                                     |
| Leelanau.....     | Alex. McKercher.....       | Leland.....       | 47              | 33             | 7              | 4                                  | 1                  | 1                              | 1                                     |
| Lenawee.....      | Frederick B. Wood.....     | Adrian.....       | 457             | 391            | 12             | 15                                 | 18                 | 17                             | 4                                     |
| Livingston.....   | Dennis Shields.....        | Howell.....       | 40              | 28             | 4              | 2                                  | 1                  | 2                              | 3                                     |
| Luce.....         | Sanford N. Dutcher.....    | Newberry.....     | 25              | 22             | 2              | —                                  | —                  | 1                              | —                                     |
| Mackinac.....     | James J. Brown.....        | St. Ignace.....   | 55              | 36             | 3              | —                                  | 14                 | 2                              | —                                     |
| Macomb.....       | Oscar C. Langerhansen..... | Mt. Clemens.....  | 230             | 164            | 3              | 9                                  | 23                 | 2                              | 29                                    |
| Manistee.....     | Thomas Smnrtwaite.....     | Manistee.....     | 539             | 442            | 24             | 29                                 | 38                 | 2                              | 4                                     |
| Manitou*.....     | —                          | —                 | —               | —              | —              | —                                  | —                  | —                              | —                                     |
| Marquette.....    | H. Olin Young.....         | Ishpeming.....    | 232             | 216            | —              | —                                  | 4                  | 12                             | —                                     |
| Mason.....        | Mortimer L. Hudson.....    | Ldington.....     | 122             | 105            | 2              | 6                                  | 1                  | 2                              | 6                                     |
| Mecona.....       | Albert B. Cogger.....      | Big Rapids.....   | 99              | 68             | 12             | 2                                  | 15                 | 1                              | 1                                     |
| Monominee.....    | Benj. J. Brown.....        | Menominee.....    | 318             | 246            | 16             | 5                                  | 16                 | 19                             | 16                                    |
| Midland.....      | Edmund P. Rice.....        | Midland.....      | 58              | 25             | 5              | 4                                  | 21                 | 3                              | —                                     |
| Missaukee.....    | Alvah G. Smith.....        | Lake City.....    | 31              | 19             | —              | 1                                  | 1                  | 8                              | 2                                     |
| Monroe.....       | Alonzo B. Bragdon.....     | Monroe.....       | 129             | 80             | 11             | 10                                 | 11                 | 8                              | 9                                     |
| Montcalm.....     | Bert Hayes.....            | Stanton.....      | 95              | 43             | 22             | 2                                  | 17                 | 8                              | 3                                     |
| Montmorency.....  | Fred J. Northway.....      | Lewiston.....     | 21              | 7              | 7              | 1                                  | 4                  | 2                              | —                                     |
| Muskegon.....     | Dan. T. Chamberlin.....    | Muskegon.....     | 278             | 201            | 33             | 5                                  | 29                 | 8                              | 2                                     |
| Newaygo.....      | George Luton.....          | Newaygo.....      | 33              | 17             | 8              | 1                                  | 4                  | —                              | 3                                     |
| Oakland.....      | George W. Smith.....       | Pontiac.....      | 202             | 154            | 19             | 2                                  | 10                 | 14                             | 3                                     |
| Oceana.....       | Louis M. Hartwick.....     | Hart.....         | 56              | 39             | 3              | 2                                  | 6                  | 1                              | 5                                     |
| Ogemaw.....       | F. L. Snodgrass.....       | West Branch.....  | 29              | 19             | 3              | —                                  | 5                  | 1                              | 1                                     |
| Ontonagon.....    | W. Worth Wendell.....      | Ontonagon.....    | 23              | 18             | 2              | 1                                  | 1                  | —                              | 1                                     |
| Oscoda.....       | Chas. H. Rose.....         | Evart.....        | 64              | 45             | 2              | 5                                  | 9                  | 3                              | —                                     |
| Oscoda.....       | John A. McMahon.....       | Mio.....          | 15              | 6              | 4              | 8                                  | —                  | 2                              | —                                     |
| Otsego.....       | Wm. A. Harrington.....     | Gaylord.....      | 32              | 15             | 6              | —                                  | 9                  | 2                              | —                                     |
| Ottawa.....       | Arend Vischer.....         | Holland.....      | 325             | 290            | 7              | 12                                 | 9                  | 7                              | —                                     |
| Presque Isle..... | George J. Moloney.....     | Rogers City.....  | 34              | 21             | 4              | 3                                  | —                  | 2                              | 4                                     |
| Roscommon.....    | Henry H. Woodruff.....     | Roscommon.....    | 24              | 22             | 1              | —                                  | 1                  | —                              | —                                     |
| Saginaw.....      | Engene A. Snow.....        | Saginaw.....      | 721             | 521            | 42             | 86                                 | 121                | 1                              | —                                     |
| Sanilac.....      | Wm. A. Mills.....          | Minden City.....  | 41              | 19             | 5              | —                                  | 2                  | 7                              | 8                                     |
| Schoolcraft.....  | C. W. Danton.....          | Manistique.....   | 58              | 34             | 5              | 4                                  | 10                 | 5                              | —                                     |
| Shiawassee.....   | Frank H. Watson.....       | Owosso.....       | 250             | 217            | 16             | 1                                  | 2                  | 4                              | 10                                    |
| St. Clair.....    | Lincoln Avery.....         | Port Huron.....   | 749             | 606            | 31             | 16                                 | 26                 | 66                             | 4                                     |
| St. Joseph.....   | David L. Akey.....         | Colon.....        | 94              | 69             | 10             | 8                                  | 3                  | 3                              | 1                                     |
| Tuscola.....      | Theron W. Atwood.....      | Caro.....         | 61              | 53             | 3              | 3                                  | 2                  | —                              | —                                     |
| Van Buren.....    | Lincoln H. Titus.....      | Paw Paw.....      | 106             | 79             | 7              | 13                                 | —                  | 7                              | —                                     |
| Washtenaw.....    | Thomas D. Kearney.....     | Ann Arbor.....    | 307             | 262            | 10             | 7                                  | 17                 | 3                              | 8                                     |
| Wayne.....        | Allan H. Frazer.....       | Detroit.....      | 7,570           | 6,029          | 725            | 425                                | 40                 | 351                            | —                                     |
| Wexford.....      | David A. Rice.....         | Cadillac.....     | 94              | 67             | 14             | 4                                  | 5                  | 2                              | 2                                     |
| Totals†.....      | —                          | —                 | 22,349          | 17,349         | 1,738          | 972                                | 992                | 915                            | 853                                   |

\* No prosecuting attorney.

† See note on page 221.



## TABLE OF CASES.

|   | Page     |
|---|----------|
| Abbott, People <i>vs.</i> .....   | 16       |
| Adsit, People <i>ex rel.</i> Attorney General <i>vs.</i> .....                                      | 41       |
| Ainger, Ewing <i>vs.</i> .....  | 56       |
| A. P. Cook Company, Limited, <i>et al.</i> , State <i>ex rel.</i> Attorney General <i>vs.</i> ..... | 116      |
| A. P. Cook Company, Limited, <i>et al.</i> , Township Treasurer <i>vs.</i> .....                    | 116      |
| Attorney General <i>vs.</i> Berry.....  | 110      |
| Attorney General <i>ex rel.</i> Speed <i>vs.</i> Corliss.....                                       | 99       |
| Attorney General <i>vs.</i> Detroit & Saline Plank Road Company.....                                | 101      |
| Attorney General, Fuller <i>vs.</i> .....   | 60       |
| Attorney General <i>ex rel.</i> Scott <i>vs.</i> Glaser.....  | 110      |
| Attorney General <i>vs.</i> Hambitzer.....  | 110      |
| Attorney General <i>vs.</i> Jochim.....   | 108      |
| Attorney General <i>ex rel.</i> Kamps <i>vs.</i> Keppel.....  | 110      |
| Attorney General <i>ex rel.</i> Reynolds <i>vs.</i> May.....  | 95, 96   |
| Attorney General <i>vs.</i> Nester.....   | 110      |
| Attorney General <i>ex rel.</i> Fuller <i>vs.</i> Parsell.....                                      | 102, 106 |
| Attorney General <i>vs.</i> Pingree <i>et al.</i> .....   | 116      |
| Attorney General <i>ex rel.</i> Griffin <i>vs.</i> Tasker.....                                      | 110      |
| Attorney General <i>vs.</i> Tinney, <i>et al.</i> .....   | 66       |
| Attorney General <i>vs.</i> White, <i>et al.</i> .....  | 66       |
| Auditor General <i>vs.</i> Bay County Treasurer.....  | 56       |
| Auditor General, <i>et al.</i> <i>vs.</i> Benedict.....   | 117      |
| Auditor General <i>vs.</i> Board of Supervisors of Bay county.....                                  | 94       |
| Auditor General, <i>et al.</i> , Burtam <i>vs.</i> .....  | 118      |
| Auditor General <i>vs.</i> Calhoun Circuit Judge.....   | 91       |
| Auditor General, <i>et al.</i> , Clark <i>vs.</i> .....   | 118      |
| Auditor General <i>et al.</i> , Crane <i>vs.</i> .....  | 118      |
| Auditor General, Ervey <i>vs.</i> .....   | 117      |
| Auditor General, Flynn <i>vs.</i> .....   | 93       |
| Auditor General, <i>et al.</i> , Hembling <i>vs.</i> .....  | 118      |
| Auditor General <i>vs.</i> Hill.....  | 111      |
| Auditor General, in the matter of (1889 taxes, Alcona).....   | 118      |
| Auditor General, in the matter of (1890 taxes, Alcona).....   | 118      |
| Auditor General, in the matter of (1891 taxes, Alcona).....   | 118      |
| Auditor General, in the matter of (1887 taxes, Muskegon).....                                       | 118      |
| Auditor General, in the matter of (1888 taxes, Muskegon).....                                       | 117      |
| Auditor General, in the matter of (1889 taxes, Muskegon).....                                       | 117      |
| Auditor General, <i>et al.</i> , Jenkinson <i>vs.</i> .....   | 117      |
| Auditor General, <i>et al.</i> , Mason <i>vs.</i> .....   | 117      |
| Auditor General, Post <i>vs.</i> .....  | 117      |
| Auditor General, <i>et al.</i> , Rice, <i>et al.</i> <i>vs.</i> .....                               | 117      |
| Auditor General <i>vs.</i> Sessions.....  | 115      |
| Auditor General, <i>et al.</i> , Simpson <i>vs.</i> .....   | 117      |
| Auditor General, <i>et al.</i> , Snover <i>vs.</i> .....  | 118      |
| Auditor General, <i>et al.</i> , Wiley <i>vs.</i> .....   | 67, 117  |
| Avery, <i>et al.</i> <i>vs.</i> Buchan, <i>et al.</i> .....   | 117      |
| Avery, <i>et al.</i> <i>vs.</i> Heemer, <i>et al.</i> .....   | 117      |
| Avery, <i>et al.</i> <i>vs.</i> Nicol, <i>et al.</i> .....  | 117      |

|  | Page   |
|--|--------|
| Bay County Treasurer, Auditor General <i>vs.</i> .....   | 56     |
| Bellett, People <i>vs.</i> .....   | 36     |
| Benedict, Auditor General, <i>et al. vs.</i> .....   | 117    |
| Berry, Attorney General <i>vs.</i> .....   | 110    |
| Berry, People <i>vs.</i> .....   | 55     |
| Blakely, People <i>vs.</i> .....   | 54     |
| Board of State Canvassers <i>et al.</i> , Rich <i>vs.</i> .....                                | 66, 67 |
| Board of Supervisors of Bay county, Auditor General <i>vs.</i> .....                           | 94     |
| Board of Supervisors, Senate of Happy Home Club of America <i>vs.</i> .....                    | 64     |
| Borgetto, People <i>vs.</i> .....  | 29     |
| Brooks, George, People <i>vs.</i> .....  | 51     |
| Brooks, Frederick, People <i>vs.</i> .....   | 54     |
| Buchan, <i>et al.</i> , Avery <i>et al. vs.</i> .....  | 117    |
| Burridge, People <i>vs.</i> .....  | 44     |
| Burtram <i>vs.</i> Auditor General, <i>et al.</i> .....  | 118    |
| Calhoun Circuit Judge, Auditor General <i>vs.</i> .....  | 91     |
| Canfield, in the matter of.....  | 48     |
| Carmody, People <i>vs.</i> .....   | 55     |
| Carter, People <i>vs.</i> .....  | 19     |
| Chambe <i>vs.</i> Durfee.....  | 63     |
| City National Bank of Lansing, State <i>vs.</i> .....  | 94     |
| Clark <i>vs.</i> Auditor General, <i>et al.</i> .....  | 118    |
| Clark, People <i>vs.</i> .....   | 55     |
| Coffin <i>vs.</i> Election Commissioners.....  | 59     |
| Commissioner of Banking <i>vs.</i> The Ingham County Savings Bank.....                         | 116    |
| Commissioner of Land Office, Pinckney <i>vs.</i> .....   | 116    |
| Common Council of Detroit, Kennedy <i>vs.</i> .....  | 59     |
| Considine, People <i>vs.</i> .....   | 55     |
| Cook, People <i>vs.</i> .....  | 15     |
| Corliss, Attorney General <i>ex rel.</i> Speed <i>vs.</i> .....                                | 93     |
| Crane <i>vs.</i> Auditor General, <i>et al.</i> .....  | 118    |
| Curley, People <i>vs.</i> .....  | 18     |
| Curtis, People <i>vs.</i> .....  | 28     |
| Dailey, People <i>vs.</i> .....  | 55     |
| Davis <i>vs.</i> Huyatt and Smith.....   | 56     |
| De France, in the matter of.....   | 40     |
| Detroit & Saline Plank Road Company, Attorney General <i>vs.</i> .....                         | 101    |
| Dix, <i>et al.</i> , State <i>vs.</i> .....  | 94     |
| Dunbar, State <i>vs.</i> .....   | 57     |
| Duncan, People <i>vs.</i> .....  | 40     |
| Dupree, People <i>vs.</i> .....  | 22     |
| Durfee, Hance <i>vs.</i> .....   | 63     |
| Durfee, Chambe <i>vs.</i> .....  | 63     |
| Eaton, People <i>vs.</i> .....   | 25     |
| Elder, People <i>vs.</i> .....   | 39     |
| Election Commissioners, Coffin <i>vs.</i> .....  | 59     |
| Ervey <i>vs.</i> Auditor General.....  | 117    |
| Evans, People <i>vs.</i> .....   | 54     |
| Ewing <i>vs.</i> Ainger.....   | 56     |
| Ezzo, People <i>vs.</i> .....  | 55     |
| Flint & Pere Marquette Railway Company, State <i>ex rel.</i> Attorney General <i>vs.</i> ..... | 114    |
| Flynn <i>vs.</i> Auditor General.....  | 93     |
| Flock, People <i>vs.</i> .....   | 31     |
| Fuller <i>vs.</i> Attorney General.....  | 60     |
| Germaine, People <i>vs.</i> .....  | 55     |
| Glaser, Attorney General <i>ex rel.</i> Scott <i>vs.</i> .....                                 | 110    |
| Gordon, People <i>vs.</i> .....  | 38     |
| Grand Rapids & Indiana Railroad Company, State <i>vs.</i> .....                                | 116    |

## TABLE OF CASES.

227

|  | Page   |
|--|--------|
| Hambitzer, Attorney General <i>vs.</i> .....                                     | 110    |
| Hamilton, People <i>vs.</i> .....  | 47     |
| Hanaw, People <i>vs.</i> .....   | 55     |
| Hance <i>vs.</i> Durfee.....   | 63     |
| Hannifan, People <i>vs.</i> .....  | 29     |
| Harris, People <i>vs.</i> .....  | 55     |
| Hatton, People <i>vs.</i> .....  | 55     |
| Hembling <i>vs.</i> Auditor General, <i>et al.</i> .....                         | 118    |
| Heemer, <i>et al.</i> , Avery, <i>et al.</i> <i>vs.</i> .....                    | 117    |
| Hicks, People <i>vs.</i> .....   | 37     |
| Hill, Auditor General <i>vs.</i> .....   | 111    |
| Hughes, People <i>vs.</i> .....  | 21     |
| Hurst <i>vs.</i> Warner.....   | 66, 94 |
| Huyatt and Smith, Davis <i>vs.</i> .....   | 56     |
| Ingraham, People <i>vs.</i> .....  | 42     |
| In the matter of the Auditor General (1889 taxes, Alcona).....                   | 118    |
| In the matter of the Auditor General (1890 taxes, Alcona).....                   | 118    |
| In the matter of the Auditor General (1891 taxes, Alcona).....                   | 118    |
| In the matter of the Auditor General (1887 taxes, Muskegon).....                 | 118    |
| In the matter of the Auditor General (1888 taxes, Muskegon).....                 | 117    |
| In the matter of the Auditor General (1889 taxes, Muskegon).....                 | 117    |
| In the matter of Canfield.....   | 48     |
| In the matter of De France.....  | 40     |
| In the matter of Jacobs.....   | 94     |
| In the matter of Mebus.....  | 53     |
| In the matter of Neff.....   | 117    |
| In the matter of Pitton.....   | 54     |
| In the matter of Reddy.....  | 117    |
| Ingham County Savings Bank, Commissioner of Banking <i>vs.</i> .....             | 116    |
| Jacobs, in the matter of.....  | 94     |
| Jackson, Lansing & Saginaw Railroad Company, State <i>vs.</i> .....              | 116    |
| James, People <i>vs.</i> .....   | 52     |
| Jassino, People <i>vs.</i> .....   | 51     |
| Jenkinson <i>vs.</i> Auditor General, <i>et al.</i> .....                        | 117    |
| Jochim, Attorney General <i>vs.</i> .....  | 108    |
| Johnson, Olaf., People <i>vs.</i> .....  | 14     |
| Johnson, Clay, People <i>vs.</i> .....   | 55     |
| Judge of Superior Court, People <i>ex rel.</i> Attorney General <i>vs.</i> ..... | 94     |
| Kabat, People <i>vs.</i> .....   | 55     |
| Keefer, U. G., People <i>vs.</i> .....   | 55     |
| Keefer, Charles E., People <i>vs.</i> .....                                      | 14     |
| Kelly, People <i>vs.</i> .....   | 47     |
| Kennedy <i>vs.</i> Common Council of Detroit.....                                | 59     |
| Keppel, Attorney General <i>ex rel.</i> Kamps <i>vs.</i> .....                   | 110    |
| Ketchum, People <i>vs.</i> .....   | 55     |
| Kimm, Dirk, People <i>vs.</i> .....  | 29     |
| Kimm, Martinus, People <i>vs.</i> .....  | 29     |
| Kindra, People <i>vs.</i> .....  | 55     |
| Knudson, People <i>vs.</i> .....   | 54     |
| Laird, People <i>vs.</i> .....   | 55     |
| Luby, People <i>vs.</i> .....  | 39     |
| Machen, People <i>vs.</i> .....  | 55     |
| Margeson, People <i>vs.</i> .....  | 34     |
| Markey, People <i>vs.</i> .....  | 38     |
| Mason <i>vs.</i> Auditor General, <i>et al.</i> .....                            | 117    |
| Mason, People <i>vs.</i> .....   | 54     |
| May, Attorney General <i>ex rel.</i> Reynolds <i>vs.</i> .....                   | 95, 96 |
| Mebus, in the matter of.....   | 53     |

|   | Page     |
|---|----------|
| Meloche, People <i>vs.</i> .....  | 55       |
| Michigan Mutual Live Stock Insurance Company, State <i>vs.</i> .....                            | 116      |
| Minneapolis, St. Paul & Sault Ste. Marie Railway Company <i>vs.</i> State Board of Health ..... | 112      |
| Neff, in the matter of.....   | 117      |
| Nester, Attorney General <i>vs.</i> .....   | 110      |
| Newman, People <i>vs.</i> .....   | 46       |
| Newton, People <i>vs.</i> .....   | 27       |
| Nicol, <i>et al.</i> , Avery, <i>et al.</i> <i>vs.</i> .....                                    | 117      |
| O'Brien, People <i>vs.</i> .....  | 24       |
| Palmer, People <i>vs.</i> .....   | 13       |
| Parrish, People <i>vs.</i> .....  | 54       |
| Parsell, Attorney General <i>ex rel.</i> Fuller <i>vs.</i> .....                                | 102, 106 |
| People <i>vs.</i> Abbott.....   | 16       |
| People <i>ex rel.</i> Attorney General <i>vs.</i> Adsit.....                                    | 41       |
| People <i>vs.</i> Bellett.....  | 36       |
| People <i>vs.</i> Berry.....  | 55       |
| People <i>vs.</i> Blakely.....  | 54       |
| People <i>vs.</i> Borgetto.....   | 29       |
| People <i>vs.</i> Brooks, Frederick.....  | 54       |
| People <i>vs.</i> Brooks, George.....   | 41       |
| People <i>vs.</i> Burrige.....  | 44       |
| People <i>vs.</i> Carmody.....  | 55       |
| People <i>vs.</i> Carter.....   | 19       |
| People <i>vs.</i> Clark.....  | 55       |
| People <i>vs.</i> Considine.....  | 55       |
| People <i>vs.</i> Cook.....   | 15       |
| People <i>vs.</i> Curley.....   | 18       |
| People <i>vs.</i> Curtis.....   | 28       |
| People <i>vs.</i> Dailey.....   | 55       |
| People <i>vs.</i> Duncan.....   | 40       |
| People <i>vs.</i> Dupree.....   | 22       |
| People <i>vs.</i> Eaton.....  | 25       |
| People <i>vs.</i> Elder.....  | 39       |
| People <i>vs.</i> Evans.....  | 54       |
| People <i>vs.</i> Ezzo.....   | 55       |
| People <i>vs.</i> Flock.....  | 31       |
| People <i>vs.</i> Germaine.....   | 55       |
| People <i>vs.</i> Gordon.....   | 38       |
| People <i>vs.</i> Hamilton.....   | 47       |
| People <i>vs.</i> Hanaw.....  | 55       |
| People <i>vs.</i> Hannifan.....   | 29       |
| People <i>vs.</i> Harris.....   | 55       |
| People <i>vs.</i> Hatton.....   | 55       |
| People <i>vs.</i> Hicks.....  | 37       |
| People <i>vs.</i> Hughes.....   | 21       |
| People <i>vs.</i> Ingraham.....   | 42       |
| People <i>vs.</i> James.....  | 52       |
| People <i>vs.</i> Jassino.....  | 51       |
| People <i>vs.</i> Johnson, Olaf.....  | 14       |
| People <i>vs.</i> Johnson, Clay.....  | 55       |
| People <i>ex rel.</i> Attorney General <i>vs.</i> Judge of Superior Court.....                  | 94       |
| People <i>vs.</i> Kabat.....  | 55       |
| People <i>vs.</i> Keefer, Charles E.....  | 14       |
| People <i>vs.</i> Keefer, U. G.....   | 55       |
| People <i>vs.</i> Kelly.....  | 47       |
| People <i>vs.</i> Ketchum.....  | 55       |
| People <i>vs.</i> Kimm, Dirk.....   | 29       |
| People <i>vs.</i> Kimm, Martinus.....   | 29       |
| People <i>vs.</i> Kindra.....   | 55       |

|  | Page   |
|--|--------|
| People <i>vs.</i> Knudson .....  | 54     |
| People <i>vs.</i> Laird .....  | 55     |
| People <i>vs.</i> Luby .....   | 39     |
| People <i>vs.</i> Machen .....   | 55     |
| People <i>vs.</i> Margeson .....   | 34     |
| People <i>vs.</i> Markey .....   | 38     |
| People <i>vs.</i> Mason .....  | 54     |
| People <i>vs.</i> Meloche .....  | 55     |
| People <i>vs.</i> Newman .....   | 46     |
| People <i>vs.</i> Newton .....   | 27     |
| People <i>vs.</i> O'Brien .....  | 24     |
| People <i>vs.</i> Palmer .....   | 13     |
| People <i>vs.</i> Parrish .....  | 54     |
| People <i>vs.</i> Pitton .....   | 19, 27 |
| People <i>vs.</i> Pyckett .....  | 34     |
| People <i>vs.</i> Quinlan .....  | 55     |
| People <i>vs.</i> Reid, <i>et al.</i> .....                                    | 54     |
| People <i>vs.</i> Robb .....   | 32     |
| People <i>vs.</i> Rohrer .....   | 35     |
| People <i>vs.</i> Sheffield .....  | 55     |
| People <i>vs.</i> Shelters .....   | 27     |
| People <i>vs.</i> Skutt .....  | 17     |
| People <i>vs.</i> Smith .....  | 54     |
| People <i>vs.</i> Spaulding .....  | 33     |
| People <i>vs.</i> Stanley .....  | 50     |
| People <i>vs.</i> Sweeney .....  | 54     |
| People <i>vs.</i> Sykes .....  | 23     |
| People <i>vs.</i> Taylor .....   | 20     |
| People <i>vs.</i> Titman .....   | 55     |
| People <i>vs.</i> Troy .....   | 18     |
| People <i>vs.</i> Wade .....   | 26     |
| People <i>vs.</i> Weaver .....   | 55     |
| People <i>vs.</i> Weeks .....  | 33     |
| People <i>vs.</i> Weitholf .....   | 36     |
| People <i>vs.</i> Weston .....   | 54     |
| People <i>vs.</i> Whittemore .....   | 55     |
| People <i>vs.</i> Wood .....   | 44     |
| Pinckney <i>vs.</i> Commissioner of Land Office .....                          | 116    |
| Pinckney <i>vs.</i> Attorney General .....                                     | 116    |
| Pitton, People <i>vs.</i> .....  | 19, 27 |
| Pitton, in the matter of .....   | 54     |
| Post <i>vs.</i> Auditor General .....  | 117    |
| Pyckett, People <i>vs.</i> .....   | 34     |
| Reddy, in the matter of .....  | 117    |
| Reid, <i>et al.</i> , People <i>vs.</i> .....                                  | 54     |
| Rice <i>et al.</i> , <i>vs.</i> Auditor General, <i>et al.</i> .....           | 117    |
| Rich <i>vs.</i> Board of State Canvassers .....                                | 66, 67 |
| Robb, People <i>vs.</i> .....  | 32     |
| Rohrer, People <i>vs.</i> .....  | 35     |
| Senate of the Happy Home Club of America <i>vs.</i> Board of Supervisors ..... | 64     |
| Sessions, Auditor General <i>vs.</i> .....                                     | 115    |
| Sheffield, People <i>vs.</i> .....   | 55     |
| Shelters, People <i>vs.</i> .....  | 27     |
| Simpson, <i>et al.</i> <i>vs.</i> Auditor General <i>et al.</i> .....          | 117    |
| Skutt, People <i>vs.</i> .....   | 17     |
| Smith, People <i>vs.</i> .....   | 54     |
| Snover <i>vs.</i> Auditor General, <i>et al.</i> .....                         | 118    |
| Spaulding, People <i>vs.</i> .....   | 33     |
| Stanley, People <i>vs.</i> .....   | 50     |
| State <i>vs.</i> City National Bank of Lansing .....                           | 94     |
| State <i>vs.</i> Dix, <i>et al.</i> .....                                      | 94     |

|  | Page    |
|--|---------|
| State <i>vs.</i> Dunbar .....  | 57      |
| State <i>vs.</i> Grand Rapids & Indiana Railroad Company .....                                       | 116     |
| State <i>vs.</i> Jackson, Lansing & Saginaw Railroad Company .....                                   | 116     |
| State <i>vs.</i> Michigan Mutual Live Stock Insurance Company .....                                  | 116     |
| State <i>vs.</i> Warner, <i>et al.</i> .....   | 94      |
| State <i>ex rel.</i> Attorney General <i>vs.</i> A. P. Cook Company, Limited, <i>et al.</i> .....    | 116     |
| State <i>ex rel.</i> Attorney General <i>vs.</i> Flint & Pere Marquette Railway Company ..           | 114     |
| State Board of Health, Minneapolis, St. Paul & Sault Ste. Marie Railroad<br>Company <i>vs.</i> ..... | 112     |
| Sweeney, People <i>vs.</i> .....   | 54      |
| Sykes, People <i>vs.</i> .....   | 23      |
| Tasker, Attorney General <i>ex rel.</i> Griffin <i>vs.</i> .....                                     | 110     |
| Taylor, People <i>vs.</i> .....  | 20      |
| Tinney <i>et al.</i> , Attorney General <i>vs.</i> .....   | 66      |
| Titman, People <i>vs.</i> .....  | 55      |
| Township Treasurer <i>vs.</i> A. P. Cook Company Limited, <i>et al.</i> .....                        | 116     |
| Troy, People <i>vs.</i> .....  | 18      |
| Wade, People <i>vs.</i> .....  | 26      |
| Warner, Hurst <i>vs.</i> .....   | 66, 94  |
| Warner, <i>et al.</i> , State <i>vs.</i> .....   | 94      |
| Weaver, People <i>vs.</i> .....  | 55      |
| Weeks, People <i>vs.</i> .....   | 33      |
| Weithoff, People <i>vs.</i> .....  | 36      |
| Weston, People <i>vs.</i> .....  | 54      |
| White <i>et al.</i> , Attorney General <i>vs.</i> .....  | 66      |
| Whittemore, People <i>vs.</i> .....  | 55      |
| Wiley <i>vs.</i> Auditor General <i>et al.</i> .....   | 67, 117 |
| Wood, People <i>vs.</i> .....  | 44      |

---

---

# INDEX.

---

---



# INDEX.

|   | Page                         |
|---|------------------------------|
| Abandoned lands:  |                              |
| when subject to transfer to State .....   | 187                          |
| certificate of examiner, when inconsistent .....                                      | 187                          |
| law concerning, time of taking effect .....   | 187                          |
| Acceptance:   |                              |
| of contract by railroad company, reasonable time .....                                | 173                          |
| Accusation:   |                              |
| against public officer, sufficiency of .....  | 63                           |
| Adjournments:   |                              |
| proper, when .....  | 33                           |
| Administratrix:   |                              |
| cannot carry on liquor business without payment of tax .....                          | 23                           |
| Admissions:   |                              |
| of respondent, sufficiently show identity .....                                       | 48                           |
| Agents:   |                              |
| for sale of liquor, liability of .....  | 132                          |
| county treasurer acts as, of township in collecting liquor taxes .....                | 151                          |
| Agency:   |                              |
| contracts of, construction of, payment of liquor tax .....                            | 46                           |
| Ainger, D. B. ....  | 174, 180, 191, 195, 198, 197 |
| Alteration:   |                              |
| of boundaries of townships, power of supervisors .....                                | 166                          |
| Amendment:  |                              |
| of title to law, mistake in reference .....   | 162                          |
| Amendments to constitution:   |                              |
| canvass of votes on, induced by fraud, may be corrected .....                         | 88                           |
| Appeals:  |                              |
| to U. S. supreme court must involve federal question .....                            | 115                          |
| Appearance:   |                              |
| of defendant, not clearly incompetent, when .....                                     | 35                           |
| Applicant:  |                              |
| for child must be approved by officer .....   | 186                          |
| Appointment:  |                              |
| of deputies, register of deeds limited to one .....                                   | 182                          |
| of census enumerator may be made by old board, though successors have qualified ..... | 211                          |
| to fill vacancy in office of regent, length of .....                                  | 216                          |
| to office, officer cannot exercise in his own behalf .....                            | 204, 211                     |
| of member of legislature prohibited .....   | 152                          |
| Appropriation:  |                              |
| must be made before money can be drawn from State treasury .....                      | 209                          |
| Approval:   |                              |
| by officer of applicant for child .....   | 186                          |
| Approval fee:   |                              |
| of insurance companies, payment of .....  | 4                            |
| amount of .....   | 119                          |
| Argument to jury:   |                              |
| opening and closing, who entitled to .....  | 99                           |
| agreements concerning, violation of, ground for reversal .....                        | 24                           |
| on motive of expert witness by prosecuting attorney .....                             | 34                           |
| Arrest:   |                              |
| of principal for another offense does not release sureties .....                      | 32                           |
| Arson:  |                              |
| evidence reviewed and held sufficient to sustain conviction for .....                 | 44                           |
| appearance of defendant after committing .....  | 34                           |
| incompetent questions, ruled out, not error .....                                     | 85                           |
| specific acts of criminality, when competent evidence .....                           | 35                           |
| Assessment:   |                              |
| of specific taxes, power of board of review to correct .....                          | 209                          |
| of taxes, completion of under law repealed .....                                      | 170                          |
| valid though plat unrecorded .....  | 198                          |
| doubling, by board of review, illegal .....   | 116                          |
| Assessment rolls:   |                              |
| valuations on need not to be preceded by dollar mark .....                            | 197                          |

|  | Page               |
|--|--------------------|
| Assistant counsel:   |                    |
| disqualification of.....   | 46                 |
| Assisting in assault:  |                    |
| responsibility for.....  | 20, 40             |
| Assault, indecent:   |                    |
| what constitutes offense of.....   | 38                 |
| Assault with intent to do great bodily harm:   |                    |
| act creating offense, sustained.....   | 18                 |
| Asylums for insane, <i>see insane asylums</i> .  |                    |
| Attorney fees:   |                    |
| paid to outside attorneys to assist Attorney General.....                                | 7-10               |
| Attorney General:  |                    |
| opinions of.....   | 120-217            |
| salary of, recommendation concerning.....  | 4-12               |
| Auditor General:   |                    |
| authority of to refund purchase money.....   | 196                |
| to cancel tax sales.....   | 196                |
| has no judicial powers except those conferred by statute.....                            | 196                |
| cannot draw money from State treasury except in pursuance of some statute.....           | 209                |
| discretion of in payment of clerks.....  | 195                |
| may audit expenses of game warden.....   | 210                |
| issue his warrant for taxes, when.....   | 162                |
| not authorized to sell State bids.....   | 125                |
| no power to issue certificates of error, when.....                                       | 125                |
| should not honor requisition on soldiers' aid fund.....                                  | 160                |
| when should refund redemption money.....   | 190                |
| reinstating lands on books of.....   | 190                |
| Bad faith:   |                    |
| on part of board will not be enquired into.....  |                    |
| Bail:  |                    |
| held not to be excessive.....  | 40                 |
| circuit court commissioner may reduce.....   | 32                 |
| Ballots:   |                    |
| cannot be marked for voter unless he first makes oath as to his physical disability..... | 98                 |
| limit term of office.....  | 213                |
| disposition of after election.....   | 175                |
| rules for marking not unreasonable.....  | 98                 |
| United States marshals cannot assist voters to mark.....                                 | 98                 |
| illegal, apportioning of, rule for.....  | 96                 |
| should be in form prescribed by law.....   | 77                 |
| with one set of candidates, should be counted as blank.....                              | 192                |
| Banks:   |                    |
| property of, manner of assessing.....  | 201                |
| Barbershops:   |                    |
| closing of on Sunday, law requiring sustained.....                                       | 36                 |
| Barghoorn, Charles D.....  | 150                |
| Bennett, J. R.....   | 136                |
| Bennett, William P.....  | 164                |
| Beverage:  |                    |
| purchasing liquor for, unnecessary to charge.....  | 47                 |
| Bills:   |                    |
| legislative, passage of, amending title.....   | 192                |
| failure to state title correctly.....  | 107                |
| Billings, S. R.....  | 200                |
| Board of control:  |                    |
| may remove warden for incapacity and want of diligence.....                              | 62                 |
| member of may prefer charges and then hear them.....                                     | 63                 |
| alleged bad faith of, will not be enquired into.....                                     | 63                 |
| Board of fish commissioners:   |                    |
| delegation of legislative power to.....  | 42                 |
| Board of health:   |                    |
| regulations by, concerning rabid dogs.....   | 180                |
| delegation of legislative power to.....  | 66                 |
| Board of registration:   |                    |
| may refuse to let person register his name.....  | 194                |
| Board of review, <i>see State Board of Review</i> .                                      |                    |
| Board of State Auditors.....   | 124, 172, 208, 212 |
| Board of State Auditors:   |                    |
| expenses of labor inspectors must be audited by.....                                     | 154                |
| to military department cannot be allowed by.....   | 124                |
| hiring offices for labor inspectors, purchasing furniture.....                           | 154                |
| power to audit claim for losses occasioned through fault of State officers.....          | 172                |
| to make deeds on behalf of State.....  | 208                |
| to refund purchase price of land deeded by State.....                                    | 212                |
| Board of State Canvassers:   |                    |
| power to decide as to regularity of returns.....   | 76                 |
| cannot receive returns not properly authenticated.....                                   | 77                 |
| may be reconvened by mandamus, when.....   | 88                 |
| neglect of duty as, may be removed from office.....                                      | 110                |
| Board of supervisors:  |                    |
| apportionment of taxes by, conclusive upon supervisor.....                               | 66                 |
| cannot refuse de facto member a seat.....  | 166                |
| alter boundaries of township, when.....  | 166                |
| dissolve or vacate a township.....   | 166                |
| refuse to appropriate salary for probate clerk.....                                      | 164                |
| failure to examine certificate of taxes, effect.....                                     | 112                |

|   |          |
|---|----------|
| Board of supervisors—Continued:   |          |
| members of, not entitled to compensation for committee work when board not in session | 57       |
| when, may act on petitions for resubmission of local option                           | 199      |
| action by, unnecessary, when local option resubmitted and continued in effect         | 199      |
| Bonds:  |          |
| official, officer to whom given may act as surety on                                  | 218      |
| maturing by multiple, are not lotteries   | 141      |
| Breaking and entering:  |          |
| time of, question for jury  | 23       |
| partial opening of window in day time   | 28       |
| evidence held sufficient to show  | 19       |
| Bridges:  |          |
| on State roads, townships must keep in repair   | 214      |
| injuries from, liability of township  | 214      |
| Burglary:   |          |
| evidence reviewed, and held sufficient to show breaking                               | 19       |
| and held sufficient to show intent to commit larceny                                  | 19       |
| and held sufficient to sustain conviction for   | 45       |
| time of breaking, question for jury   | 23       |
| store shop held part of a dwelling house  | 23       |
| raising window slightly open constitutes  | 23       |
| possession of stolen goods evidence of, when  | 45       |
| Burr, C. B.   | 148      |
| Cancellation:   |          |
| of tax sales, authority of Auditor General  | 196      |
| Candidates:   |          |
| cannot act as inspectors of election  | 175, 183 |
| Canvassing boards:  |          |
| determination of, induced by fraud, not final   | 88       |
| power to reconsider their determination   | 77       |
| may be reconvened by mandamuses, when   | 89       |
| political actions of, not subject to review   | 51       |
| Canvass:  |          |
| provisions concerning, directory, when  | 90       |
| when mandatory  | 90       |
| need not be written out in words at length  | 90       |
| of returns not duly authenticated   | 90       |
| regularity of returns, question for whom  | 76       |
| of votes on constitutional amendment, final, when                                     | 76       |
| not final when induced by fraud   | 88       |
| Cells:  |          |
| prisoners in cells may be confined in   | 176      |
| Census enumerators:   |          |
| member of township board is eligible to office of                                     | 204      |
| cannot appoint himself to office of   | 204, 211 |
| Governor may appoint, when  | 211      |
| may be appointed by old board though successors have qualified                        | 211      |
| Certificate:  |          |
| false, of insurance company, properly admitted in evidence                            | 28       |
| of canvassing board, tabulated statement no part of                                   | 77       |
| of county clerk, when unnecessary to entitle deed to record                           | 185      |
| of township taxes, failure of board of supervisors to examine effect                  | 112      |
| Certificate of error:   |          |
| setting aside tax title by  | 190      |
| Auditor General cannot issue, when  | 125      |
| Certificate of payment of taxes:  |          |
| where should be filed   | 123      |
| need not be recorded  | 123      |
| fees for filing   | 123      |
| need not accompany mortgage when presented for record                                 | 129      |
| must be presented before tax deed is entitled to recording                            | 128      |
| one is sufficient where deed covers same date and description                         | 186      |
| Chamberlain, William  | 156      |
| Change of venue:  |          |
| by justice of the peace, when improper  | 40       |
| Character:  |          |
| proof of may be offered for purpose of creating a doubt                               | 51       |
| specific criminal acts  | 35       |
| Charges:  |          |
| for removal, officers must be endorsed by prosecuting attorney                        | 205      |
| must be verified by affidavit   | 206      |
| must be specific  | 174, 205 |
| who may prefer  | 63       |
| Charge of court, see instructions.  |          |
| Charter:  |          |
| surrender of creates new corporation  | 206      |
| Chester, Gny M.   | 199      |
| Children:   |          |
| indenturing, applicant for, must be approved by officer                               | 186      |
| manner of, law prescribes   | 176      |
| Circuit court:  |          |
| action of, in allowing coroner's fees, not open to review                             | 98       |
| power to review evidence returned on examination                                      | 41       |
| Circuit court commissioner:   |          |
| may reduce bail of committing magistrate  | 32       |

|   | Page    |
|---|---------|
| Citations:  |         |
| probate clerk may issue .....   | 120     |
| issuing of, is not a judicial act .....   | 120     |
| by Governor, form of .....  | 110     |
| need not be authenticated by great seal .....   | 110     |
| City counselor of Detroit:  |         |
| appointment of, vested exclusively in mayor .....   | 101     |
| term of office of .....   | 101     |
| cannot be removed by mayor or council .....   | 101     |
| City treasurers:  |         |
| no authority to retain State and county taxes to fill delinquent school funds .....       | 186     |
| Class legislation:  |         |
| law requiring barber shops to close on Sunday is not .....                                | 37      |
| exemption of seventh day observers .....  | 87      |
| Clerks:   |         |
| discretion of Auditor General in payment of .....   | 195     |
| regular, game and fish warden not authorized to employ .....                              | 191     |
| Commerce:   |         |
| disease is not a subject of .....   | 113     |
| quarantine laws are no infringement of .....  | 113     |
| Commissioner of schools:  |         |
| salary of, period of payment .....  | 169     |
| Committee work:   |         |
| supervisors not entitled to, when board not in session .....                              | 57      |
| Common council of Detroit:  |         |
| cannot remove city counselor .....  | 101     |
| Comparison:   |         |
| of stolen goods with those from building burglarized .....                                | 45      |
| Compensation, <i>see also salaries, fees, etc.</i> :                                      |         |
| of labor inspectors, limited by appropriation .....                                       | 154     |
| cannot be drawn for Sundays .....   | 154     |
| of supervisors, when board not in session .....   | 57      |
| of outside attorneys paid by State to assist Attorney General .....                       | 7-10    |
| Complaint:  |         |
| need not follow strictly the letter of the statute .....                                  | 53      |
| Computation of time, <i>see time</i> .  |         |
| Conditional sales:  |         |
| cannot be made to State for public buildings .....  | 184     |
| Confessions:  |         |
| weight that should be given to .....  | 30      |
| Conflicting clauses:  |         |
| in statute, latter prevails .....   | 173     |
| Consolidate:  |         |
| meaning of term .....   | 107     |
| Conspiracy:   |         |
| allegations of held impertinent and scandalous .....                                      | 106     |
| Constitutions:  |         |
| verity of, not subject to judicial inquiry .....  | 82      |
| Constitutional amendment:   |         |
| canvass of votes on, final, when .....  | 76      |
| when not .....  | 85      |
| Constitutional law:   |         |
| construction,   |         |
| members of legislature, employment of, prohibited .....                                   | 152     |
| process issued by Governor, form of .....   | 110     |
| specific taxes must be applied to certain purposes .....                                  | 64      |
| object of tax must be stated in law .....   | 64      |
| amendments,   |         |
| courts cannot enquire into verity of .....  | 82      |
| rights to liberty and personal property,  |         |
| vested rights of prisoners in good time statute .....                                     | 49, 158 |
| of officer in office .....  | 109     |
| retroactive statutes .....  | 156     |
| removal of officer, due process of law .....  | 109     |
| Governor may act as accuser and judge .....   | 109     |
| erection of telegraph poles along highway, compensation .....                             | 26      |
| diminishing value of riparian owner's property .....                                      | 42      |
| impartial trial, held not to have been granted .....                                      | 24      |
| taxes must be uniform .....   | 64      |
| elective franchise,   |         |
| women cannot be empowered to vote at city elections .....                                 | 59      |
| powers of State government,   |         |
| quarantine laws no infringement of commerce .....   | 113     |
| delegation of legislative power to private corporations .....                             | 65      |
| to fish commission .....  | 42      |
| to board of health, formulation of rules .....  | 68      |
| suspension of general laws .....  | 137     |
| barber Sunday law not class legislation .....   | 37      |
| losses occasioned through fault of State officer, power of legislature to make good ..... | 172     |
| division of powers,   |         |
| executive department, power to remove public officers .....                               | 62      |
| when may act as accuser and judge .....   | 63      |
| decisions of canvassing boards not final when .....                                       | 88      |
| political actions of canvassing board not subject to review .....                         | 81      |

|  |         |
|--|---------|
| Constitutional law—division of powers— <i>Continued</i> :                        |         |
| legislative department,  |         |
| with reason of law courts have no concern  | 107     |
| enactment of statutes, amending title  | 102     |
| when title expresses but one object  | 42      |
| section of act not within title  | 130     |
| title need not state facts constituting offense                                  | 48      |
| law need not state facts constituting offense                                    | 18      |
| failure to state title correctly, effect   | 107     |
| revision of law, re-enacting at length   | 107     |
| act relative to prize fighting sustained   | 20      |
| judicial department,   |         |
| courts cannot enquire into verity of constitution                                | 82      |
| with reason of law courts have no concern  | 107     |
| charges for removal of officer need not be tried by, when                        | 62      |
| general principles,  |         |
| increase of punishment on second and third offenses                              | 48      |
| canvass of votes on constitutional amendment is political, not judicial          | 76      |
| Continuando:   |         |
| cannot be rejected as surplisage, when   | 47      |
| Contracts:   |         |
| with member of legislature, prohibited   | 152     |
| of public officers, private interest   | 144     |
| between State and railroad company, acceptance, reasonable time                  | 173     |
| of agency, construction of, payment of liquor tax                                | 46      |
| prison, law in force providing for   | 156     |
| Conveyance, <i>see</i> deeds.  |         |
| Coombs, John A.  | 141     |
| Coroner:   |         |
| fees of, when allowed by circuit court, cannot be questioned                     | 93      |
| Corporations:  |         |
| on surrender of charter, new created   | 206     |
| must pay franchise fee   | 206     |
| completion of organization, right to erect telegraph poles                       | 26      |
| Corroboration:   |         |
| heresy testimony, when admissible for purpose of                                 | 38      |
| Counties:  |         |
| support of insane patients, computation of time                                  | 148     |
| lands held by are exempt from taxation   | 207     |
| settlement with State, unlawful charges, deduction of interest                   | 180     |
| Counts:  |         |
| charging distinct offenses, election   | 36      |
| County clerk:  |         |
| certificate of, when unnecessary to entitle deed to record                       | 165     |
| County commissioner of schools, <i>see</i> commissioner of schools.              |         |
| County treasurer:  |         |
| may issue duplicate liquor licenses, when  | 182     |
| presumption as to performance of duty  | 26      |
| acts as agent of township in collecting liquor taxes                             | 151     |
| cannot retain liquor taxes to fill delinquent school funds                       | 151     |
| Courts:  |         |
| of the United States, jurisdiction to review decision of State court             | 115     |
| Court house:   |         |
| voting tax to build, sufficiency of notice                                       | 120     |
| Crawford, Charles  | 208     |
| Credibility:   |         |
| immorality does not affect   | 16      |
| Creditors:   |         |
| rights of, against fund in hands of guardian                                     | 58      |
| Crimes:  |         |
| total number of  | 221     |
| list of  | 218-221 |
| Criminal cases pending in Supreme Court  | 54      |
| Criminal law, <i>see also</i> particular offenses, as murder, manslaughter, etc. |         |
| act creating offense need not define it  | 18      |
| responsibility for criminal acts   | 31      |
| degree of connection with act,   |         |
| intermeddler in affray, responsibility of  | 10, 39  |
| grade of offense, merger,  |         |
| failure to show malice in murder cases may reduce to manslaughter                | 14      |
| particular classes of crime,   |         |
| indecent assault, what constitutes   | 38      |
| leasing gaming rooms must be proof of hire and reward                            | 36      |
| burglary, further raising of slightly opened window constitutes                  | 28      |
| prize fighting, what constitutes   | 21      |
| soliciting prostitutes to enter house of ill-fame                                | 15      |
| information,   |         |
| for prize fighting, when sufficient  | 20      |
| variance between complaint and   | 82      |
| duplicity in   | 14      |
| two offenses charged under liquor law, when                                      | 36      |
| distinct offenses charged, election of counts                                    | 36      |
| prosecuting attorney,  |         |
| assistant counsel to, disqualification   | 46      |
| remarks of, held not expressive of an opinion                                    | 29      |
| prejudicial remarks and conduct of   | 24      |
| remarks of, when not error   | 17      |

|   | Page     |
|---|----------|
| Criminal law—Continued:   |          |
| pleas,  |          |
| waiver of objections by pleading .....  | 29, 48   |
| trial,  |          |
| of offense under law suspended .....  | 27       |
| impartial, not granted, when .....  | 24       |
| calling of eye witnesses .....  | 22       |
| sentences,  |          |
| void for uncertainty, when .....  | 54       |
| of trial court will not be reviewed, when .....                                 | 48       |
| instructions,   |          |
| uncontradicted, will be presumed correct .....                                  | 17       |
| as to malice, use of term <i>malis animo</i> .....                              | 30       |
| as to previous threats, when should be given .....                              | 13       |
| lesser offenses than charged should be defined .....                            | 17       |
| jury,   |          |
| what offense committed, question for .....                                      | 18       |
| cannot sit on two trials involving same state of facts .....                    | 19       |
| whether burglary committed, question for .....                                  | 23       |
| all must be satisfied of guilt before they can convict .....                    | 29       |
| right of, to deliberate .....   | 45       |
| disqualifications of .....  | 14       |
| evidence,   |          |
| of immorality not admissible, when .....  | 16       |
| prior to offense named admissible, when .....                                   | 18       |
| of good character may be offered for purpose of creating a doubt .....          | 51       |
| inference of intent may be drawn from use of deadly weapon .....                | 52       |
| of locality of offense, judicial notice .....                                   | 19       |
| held sufficient to show breaking .....  | 19       |
| to show intent to commit larceny .....  | 19       |
| possession of stolen goods evidence of burglary .....                           | 45       |
| comparison of stolen property with other .....                                  | 45       |
| reviewed, and held sufficient to show burglary .....                            | 45       |
| as to sanity of defendant .....   | 31       |
| of prior acts, when not remote .....  | 17       |
| parole, showing record of convictions .....                                     | 48       |
| identity of respondent sufficiently shown, when .....                           | 48       |
| statements of persons assaulted, when hearsay .....                             | 33       |
| weight that should given confessions of guilt .....                             | 30       |
| of embezzlement, admission of public record .....                               | 32       |
| incompetent questions, ruling out, effect .....                                 | 35       |
| specific acts of criminality, when competent .....                              | 35       |
| appearance of defendant at time of offense, competent .....                     | 35       |
| Cross-examination:  |          |
| competent to ask witness concerning specific acts of criminality .....          | 35       |
| Cummings, E. P. ....  | 122      |
| Cumulative sentences:   |          |
| what held to be .....   | 54       |
| Damages:  |          |
| opening private roads, assessable to applicant .....                            | 122      |
| from defective bridges on State roads, liability of townships .....             | 214      |
| Deadly weapon:  |          |
| use of, inference of intent may be drawn from .....                             | 52       |
| Deeds:  |          |
| of State, void, purchase price may be refunded by Board of State Auditors ..... | 212      |
| on behalf of State, Board of State Auditors cannot make .....                   | 208      |
| to State for public grounds must convey absolute fee .....                      | 134      |
| covering same date and description need but one tax certificate .....           | 136      |
| executed outside of State, recording of .....                                   | 165      |
| Deduction:  |          |
| for credits cannot be made from personal chattels .....                         | 201      |
| cannot be made from real estate .....   | 201, 202 |
| De facto officers:  |          |
| acts of cannot be attacked collaterally .....                                   | 105      |
| entitled to seat on board of supervisors .....                                  | 166      |
| Defense   |          |
| extortion of recognizance, matter of .....                                      | 33       |
| Definitions, <i>see words and phrases adjudged:</i>                             |          |
| Delegation of legislative power:  |          |
| to private corporations void, when .....  | 65       |
| act authorizing State Board of Health to formulate rules held to be .....       | 66       |
| Deliberation of jury, <i>see jury.</i>  |          |
| Demurrer, <i>see also pleadings.</i>  |          |
| overruling, time given to plead .....   | 96       |
| Deputies:   |          |
| register of deeds cannot appoint more than one .....                            | 182      |
| Detectives:   |          |
| jury cannot be asked to act as .....  | 24       |
| Diligence:  |          |
| officer may be removed for want of .....  | 63       |
| Directory statutes, <i>see statutes.</i>  |          |
| Discretion:   |          |
| of Auditor General in payment of clerks .....                                   | 195      |
| judicial, abuse of .....  | 27       |

|   | Page     |
|---|----------|
| Disorderly persons:   |          |
| act relative to, sustained .....  | 48       |
| sentence of, within discretion of Legislature .....   | 48       |
| to State Prison at Marquette, erroneous .....   | 133      |
| how long may be .....   | 34       |
| Dissolution:  |          |
| of townships by board of supervisors .....  | 166      |
| Dogs:   |          |
| rabid, are nuisances, and may be muzzled .....  | 180      |
| Dollar marks:   |          |
| need not precede valuations on assessment rolls .....   | 197      |
| Drunkenness:  |          |
| act providing cure for, held unconstitutional .....   | 65       |
| Douglass, F. M. ....  | 217      |
| Due process of law:   |          |
| diminishing value of riparian owner's lands and fishing tackle .....  | 42       |
| removal of officer by Governor is .....   | 109      |
| Duplicate liquor licenses:  |          |
| when may be issued .....  | 132      |
| Duplicity:  |          |
| when information held bad for .....   | 14, 47   |
| Dutcher, S. N. ....   | 132      |
| Dwelling house:   |          |
| burning of, evidence sufficient to sustain conviction for .....   | 44       |
| shoe shop held to be a part of .....  | 23       |
| Eddy, F. D. ....  | 181      |
| Election of counts:   |          |
| defendant entitled to, when distinct offense is charged .....   | 36       |
| when should be required .....   | 14       |
| Elections:  |          |
| qualifications of voters,   |          |
| law authorizing women to vote at city, held void .....  | 59       |
| notices,  |          |
| to vote tax to build court house, sufficiency of .....  | 120      |
| determination of result,  |          |
| result affected by illegal votes .....  | 95       |
| rejection of illegal votes, rule for .....  | 99       |
| ballots with one set of candidates unmarked should be counted as blank .....  | 192      |
| privilege of secrecy,   |          |
| persons who cannot read English must take oath to that effect before their ballots can be marked by other persons .....                   | 98       |
| requirement of election law that person must make oath to physical disability before ballot can be marked for him, not unreasonable ..... | 98       |
| United States marshals cannot assist voters in marking ballots .....  | 98       |
| officers, duties and powers of,   |          |
| canvassing boards, decision of, not final when induced by fraud .....   | 88       |
| in canvass of votes exercise political power .....  | 76       |
| power of, to reconvene .....  | 77       |
| inspectors of election, deficiency in, how filled .....   | 183      |
| candidates for township offices cannot act as .....   | 173, 183 |
| must receive vote of elector if oath is taken .....   | 194      |
| disposition of ballots by .....   | 175      |
| returns of, need not be written out in length .....   | 90       |
| not authenticated, should be counted .....  | 90       |
| regularity, question of, by whom decided .....  | 76       |
| must be properly authenticated .....  | 77       |
| ballot must be in form prescribed by law .....  | 77       |
| school, qualifications of voters at .....   | 150      |
| registration not required at .....  | 150      |
| right of women to vote at, not affected by municipal franchise law .....  | 150      |
| officers must be elected by ballot .....  | 149      |
| officers cannot be voted for by proxy .....   | 149      |
| majority is necessary to election of officers .....   | 149      |
| Electors, see voters.   |          |
| Embezzlement:   |          |
| township records properly received in proof of .....  | 32       |
| charging on day certain .....   | 31       |
| Employment:   |          |
| of member of Legislature, prohibited .....  | 152      |
| Endorsement:  |          |
| of charges for removal of officer .....   | 205      |
| Equal protection of the laws:   |          |
| law requiring barber shops to close on Sunday, does not deny .....  | 37       |
| Error:  |          |
| non-prejudicial, effect of .....  | 44       |
| not ground for reversal .....   | 27       |
| when incompetent questions ruled out .....  | 35       |
| when harmless .....   | 43       |
| Estate upon condition:  |          |
| deeds granting should not be accepted by State authorities .....  | 184      |

|  | Page |
|--|------|
| Evidence:  |      |
| setting forth in pleading .....  | 95   |
| relevancy and materiality .....  |      |
| appearance of defendant, not clearly incompetent when .....  | 35   |
| of kind of floor stolen same as in building broken into, competent .....   | 45   |
| comparison of grades of floor stolen with that manufactured in mill .....  | 45   |
| false statement as to reserve fund in insurance company, admissible to show false pre-<br>tenses .....                               | 28   |
| of identity, admissions of defendant .....   | 48   |
| parole, admission, when harmless .....   | 48   |
| as to identity, admissible as a part of <i>res gestae</i> .....  | 51   |
| impressions as to identity receivable .....  | 51   |
| statements of child immediately after offense committed, mother cannot testify to .....  | 38   |
| hearsay, when competent for purposes of corroboration .....  | 38   |
| testimony of third persons as to exclamations of accomplice, is hearsay and inadmissible<br>as a part of the <i>res gestae</i> ..... | 27   |
| question of sanity predicated on sufficient facts .....  | 31   |
| township records admissible to show embezzlement .....   | 32   |
| production and effect of evidence .....  |      |
| weight of, presumptions attending official action .....  | 111  |
| weight of, question for jury .....   | 41   |
| return by examining magistrate, circuit court cannot pass upon .....   | 41   |
| proof of non-existence of alleged reserve fund, held sufficient .....  | 28   |
| of previous convictions, sufficient to give jurisdiction .....   | 48   |
| incompetent questions, ruling out, effect .....  | 35   |
| specific acts of criminality, when competent .....   | 35   |
| when sufficient to sustain conviction for arson .....  | 44   |
| held sufficient to show breaking .....   | 19   |
| to show intent to commit larceny .....   | 19   |
| reviewed and held not to necessarily show murder .....   | 39   |
| of immorality, not admissible .....  | 16   |
| prior to offense charged, admissible .....   | 16   |
| of reputation for morality, decency, etc., inadmissible .....  | 17   |
| disabilities of husband and wife to testify against each other .....   | 38   |
| motion to strike out all of witness' testimony, when properly denied .....   | 51   |
| Examination:   |      |
| of prisoner by circuit judge, sufficient .....   | 89   |
| cannot be transferred by justice, though material witness .....  | 40   |
| evidence taken at, circuit court no power to review .....  | 41   |
| Exceptions, <i>see objections</i> .  |      |
| Excessive bail:  |      |
| when held not to be .....  | 40   |
| Excessive sentences: <i>see sentences</i> .  |      |
| Exemptions:  |      |
| from taxation of land held by counties .....   | 207  |
| does not apply to existing railroads .....   | 200  |
| from suit, charter provisions valid .....  | 189  |
| Expenses:  |      |
| of game warden, may be allowed by Auditor General .....  | 210  |
| of inquests on bodies of strangers, liability of State .....   | 174  |
| of labor inspectors, by whom audited .....   | 154  |
| of military department must be paid out of military fund .....   | 124  |
| Extortion of recognizance:   |      |
| should be set up in defence .....  | 33   |
| False pretenses:   |      |
| untruthful circulars of insurance companies, evidence of .....   | 28   |
| pretended fund, evidence held sufficient to show lack of .....   | 28   |
| Fees:  |      |
| of coroner for holding inquest, allowed by circuit court, not open to review, when .....   | 93   |
| of stenographer for taking inquest, properly allowed, when .....   | 93   |
| of register of deeds for filing county treasurer's certificate .....   | 123  |
| Federal question:  |      |
| must be involved in appeal to U. S. supreme court .....  | 115  |
| Fishing tackle:  |      |
| diminishing value of, constitutional law .....   | 42   |
| Forbes, William A. ....  | 183  |
| Former sentence:   |      |
| question of may be determined by prison authorities .....  | 50   |
| Fowler, W. H. ....   | 137  |
| Franchise fee:   |      |
| corporation surrendering old charter and reorganizing must pay .....   | 206  |
| Fraternal insurance companies:   |      |
| charter provisions exempting from suit valid .....   | 189  |
| Funds:   |      |
| in hands of guardian, liable to debts of ward .....  | 58   |
| Furniture:   |      |
| purchasing of for labor inspectors' offices .....  | 154  |
| Gambling:  |      |
| bonds matured by multiple a species of .....   | 141  |
| Game law:  |      |
| diminishing value of riparian owner's lands .....  | 42   |
| title of act regulating, held constitutional .....   | 42   |
| giving permits by fish commission .....  | 42   |

|  |          |
|--|----------|
| Game and Fish Warden, <i>see</i> State Game and Fish Warden.                                 |          |
| Gaming room:   |          |
| leasing, must be for hire and reward   | 86       |
| Gardner, Washington  | 206      |
| General laws:  |          |
| suspension of  | 187      |
| when repeal local statutes   | 188      |
| Giddings, Theron F.  | 130      |
| Good time:   |          |
| new trial, first imprisonment cannot be considered in computing                              | 217      |
| sentences to other prisons cannot be considered in computing                                 | 217      |
| vested right of prisoner in  | 49, 156  |
| of prisoners, computation of   | 156      |
| Governor:  |          |
| in removal of officers may act as accuser and judge  | 109      |
| may remove officer for gross neglect of duty   | 110      |
| citation by, form of   | 110      |
| need not be authenticated by great seal  | 110      |
| may fill vacancy in office of regent for unexpired term                                      | 216      |
| power to remove warden of prisons, not limited to  | 62       |
| when may appoint census enumerator   | 211      |
| Government license:  |          |
| taking out in local option county, proof of, effect  | 43       |
| Gravamen:  |          |
| of offense in soliciting females to enter house of ill-fame                                  | 16       |
| Graves, B. F.  | 177      |
| Griffeth, E. L.  | 203      |
| Gross neglect of duty:   |          |
| what is  | 110      |
| Guardian:  |          |
| funds of ward in hands of, subject to ward's debts   | 58       |
| Half holidays:   |          |
| notes falling due on, when protestable   | 137      |
| Hammond, W. H.   | 214      |
| Hampton, Charles S.  | 162      |
| Handy, Sherman T.  | 194      |
| Hartwick, L. M.  | 185      |
| Hayes, S. E.   | 170      |
| Hayward, Fred H.   | 192      |
| Health laws:   |          |
| no infringement of interstate commerce   | 113      |
| rules essential to proper enforcement of   | 114      |
| detention of passengers from non-infected countries, unavoidable                             | 114      |
| certificates of United States inspectors, State authorities not bound by                     | 114      |
| do not conflict with treaty between United States and foreign countries                      | 114      |
| costs connected with enforcement of, chargeable against railway company                      | 114      |
| rabid dogs may be muzzled  | 180      |
| board of health, delegation of legislative power to  | 66       |
| Heresay testimony:   |          |
| statements of accomplice to third persons  | 27       |
| when admissible for purposes of corroboration  | 38       |
| statements of victim immediately after commission of offense                                 | 38       |
| Highways:  |          |
| private, damages assessable to applicant   | 122      |
| work done on, credit for   | 122      |
| erection of telegraph poles on, compensation to adjoining owners                             | 26       |
| taxes for, must be expended in surveyed township   | 203      |
| Hire, gain and reward:   |          |
| must be charged in information for leasing gaming room                                       | 36       |
| Historical report:   |          |
| publishing of, by World's Fair Commissioners   | 93       |
| Holidays:  |          |
| notes falling due on, when protestable   | 187      |
| law relative to, cannot be suspended, when   | 187      |
| half holidays, protesting notes falling due on   | 187      |
| Hotchkiss, E. H.   | 175, 183 |
| House of ill-fame:   |          |
| soliciting females to enter, offense complete, whether house resorted to for that purpose by |          |
| others or not  | 16       |
| soliciting females to enter, who are at the time prostitutes, does not create offense        | 16       |
| Husband and wife:  |          |
| cannot testify against each other without consent  | 88       |
| Identity:  |          |
| of respondent, sufficiently shown by his admissions  | 48       |
| evidence of, part of <i>res gestæ</i> when   | 51       |
| impression of witnesses as to, receivable  | 51       |
| evidence tending to show, inadmissible, when   | 27       |
| Illegal tax:   |          |
| when paid, State becomes equitable trustee   | 209      |
| Ill-fame, <i>see</i> house of ill-fame.  |          |
| Immaterial issues:   |          |
| on item of evidence, not demurrable  | 95       |
| Impartial trial:   |          |
| held not to have been granted  | 24       |
| Impeachment:   |          |
| by moral character, erroneous  | 16       |

|  | Page     |
|--|----------|
| Incapacity:<br>public officer may be removed for.....  | 63       |
| Incest:<br>acts of, eight years prior to the offense alleged, admissible.....  | 17       |
| whether acts of intercourse constituted crime of rape or incest, held properly left to jury to determine.....                                | 18       |
| Indecent assault:<br>what constitutes offense of.....  | 88       |
| Indenturing children:<br>applicant for child must be approved by some officer.....   | 186      |
| methods of, law prescribes.....  | 176      |
| Inference of intent:<br>may be drawn from use of deadly weapon.....  | 52       |
| Informations:<br>for violation of local option law, when bad for duplicity.....  | 14       |
| when sufficient.....   | 14       |
| when prosecution should be required to elect under.....  | 14       |
| charging several sales of liquor, bad for duplicity.....   | 47       |
| distinct offenses, non-prejudicial error.....  | 26       |
| for leasing gaming room must charge hire and reward.....   | 38       |
| for prize fighting, need not set out facts constituting.....   | 20       |
| variance from complaint, charging date, immaterial.....  | 31       |
| Inheritance tax law:<br>unconstitutional.....  | 63       |
| Initials:<br>persons may run for office by.....  | 213      |
| of notary public sufficient.....   | 181      |
| Inquests:<br>on dead body of stranger, expenses must be borne by State.....  | 174      |
| fees for, allowance by circuit court, not open to review, when.....  | 93       |
| of stenographer, when should be allowed.....   | 93       |
| notice of holding served on prosecuting attorney, sufficient.....  | 93       |
| Insane asylums:<br>support of patients, computation of time.....   | 148      |
| committing patient from two different counties, computation of time.....   | 148      |
| deed of grounds for to State must convey absolute fee.....   | 184      |
| Insane soldiers:<br>cannot be discharged from Soldiers' Home.....  | 177      |
| State must support.....  | 177      |
| Insane ward:<br>legacy to, subject to payment of debts.....  | 58       |
| Inspectors, <i>see labor inspectors.</i>   |          |
| Inspectors of election:<br>board of, deficiency in, how filled.....  | 183      |
| candidates for township offices cannot be.....   | 175, 188 |
| Instructions:<br>construction,<br>as to liability of persons selling soft drinks in local option county, held correct.....                   | 43       |
| that all of the jury must be satisfied before they can convict, held sufficient.....   | 29       |
| as to the right of juries to deliberate.....   | 45       |
| should be considered as a whole.....   | 52       |
| erroneous but harmless,<br>that entire vote of district might be rejected.....   | 99       |
| evidence of guilt clear.....   | 48       |
| misleading,<br>absence of malice in cases of murder, manslaughter should be defined.....   | 14       |
| when held to be.....   | 40       |
| use of the term " <i>malto animo</i> " as explaining malice.....   | 30       |
| as to previous threats and the purchase of loaded revolvers should be given as bearing on the question of which party was the aggressor..... | 13       |
| information for rape, lesser offenses should be defined.....   | 17       |
| pertinency to issues and evidence,<br>theory of defense should be given to jury.....   | 38       |
| objection to that there was no evidence to sustain it, overruled when record fails to set forth evidence.....                                | 23       |
| as to confessions, the weight to be given them, etc., held proper.....   | 30       |
| statements in presumed to be correct when not contradicted by the record.....  | 17       |
| objections to must be made at trial.....   | 28       |
| Insurance:<br>act 101, Laws of 1893, does not repeal act 74 of the same year.....  | 180      |
| section of said act permitting unauthorized insurance, unconstitutional.....   | 180      |
| Insurance companies:<br>list of.....   | 119      |
| fees for approving, amount of.....   | 119      |
| are required to pay approval fee.....  | 4        |
| Intent:<br>to commit larceny, evidence held sufficient to show.....  | 19       |
| inference of, may be drawn from use of deadly weapon.....  | 52       |
| Interest:<br>rate of on State bids.....  | 125      |
| when lands bid off to individuals.....   | 125      |
| on taxes of 1891 and 1892.....   | 125      |
| deduction of, when should be made on settlement between State and county.....  | 180      |
| Intermeddlers:<br>in criminal assaults, responsibility.....  | 39       |
| with affray, when guilty of manslaughter.....  | 19       |

|   | Page   |
|---|--------|
| Interstate commerce, <i>see</i> commerce.   |        |
| Intoxicating liquors, <i>see</i> liquor law.  |        |
| Introduction  | 3-12   |
| Jashnig, Arno   | 182    |
| Jag cure act:   |        |
| held unconstitutional   | 64     |
| Jails:  |        |
| sheriff may confine prisoners in cells  | 176    |
| Journal entry:  |        |
| neglect to make by probate court, effect  | 58     |
| Judiciary:  |        |
| cannot enquire into verity of constitution  | 52     |
| Judicial act:   |        |
| issuing of citation or summons is not   | 120    |
| Judicial notice:  |        |
| of Lake St. Clair, courts will take   | 42     |
| court can take as to location of cities   | 19     |
| Judicial power:   |        |
| canvassing of votes is not  | 76     |
| Judicial questions:   |        |
| authority of Auditor General to decide  | 196    |
| Jurisdiction:   |        |
| evidence of previous convictions sufficient to give                                       | 48     |
| of U. S. Supreme Court on appeal, federal question must be involved                       | 115    |
| Jurors:   |        |
| when not disqualified to sit on trial for violation of local option law                   | 14     |
| refusal to permit examination of as to how they would render verdict in case the evidence | 14     |
| was equally balanced, is error  | 18     |
| cannot sit on two trials involving same facts   | 18     |
| Jury:   |        |
| drawing of, objections to overruled   | 94     |
| right of to deliberate  | 29, 45 |
| instructing, use of Latin terms not misleading, when                                      | 31     |
| theory of defense should be stated  | 93     |
| kind of offense properly left to  | 18     |
| cannot be asked to act as detectives  | 24     |
| agreements as to addressing, binding  | 24     |
| waiver of trial by, what amounts to   | 33     |
| whether breaking was in night time or day time, question for                              | 23     |
| Justices of the peace:  |        |
| cannot sentence disorderly persons to Marquette prison                                    | 133    |
| cannot transfer examination, though material witness                                      | 40     |
| term of office cannot be limited by ballot  | 213    |
| Kirkby, Elmer   | 120    |
| Knights of Maccabees:   |        |
| provisions of charter, exempting from suit, valid   | 139    |
| Labor:  |        |
| on highways must be expended in surveyed township   | 208    |
| on private roads, credit for  | 122    |
| Labor inspectors:   |        |
| compensation and expenses of, limited by appropriation                                    | 154    |
| expenses of, by whom audited  | 154    |
| cannot draw pay for Sundays   | 154    |
| Laing, John C.  | 120    |
| Lands:  |        |
| what are public   | 207    |
| held by counties are exempt from taxation   | 207    |
| Larceny:  |        |
| intent to commit, evidence held sufficient to show  | 19     |
| Laws, <i>see</i> statutes.  |        |
| Leasing room for gaming purposes:   |        |
| must be for hire and reward   | 36     |
| Legacy:   |        |
| must be used in support of ward   | 58     |
| Legislature:  |        |
| authority of, concerning loss occasioned through fault of State officers                  | 172    |
| cannot delegate to private corporations power to make laws for discharge of offenders     | 65     |
| cannot prescribe qualifications of voters at city elections                               | 59     |
| employment of members of, prohibited  | 152    |
| length of time prohibited   | 152    |
| Legislative power:  |        |
| delegation of to State Board of Health, unconstitutional                                  | 66     |
| to fish commission  | 42     |
| to private corporations   | 65     |
| Letters:  |        |
| of prisoners, right of sheriff to open  | 176    |
| number written during fiscal year   | 4      |
| Liability:  |        |
| of State for expenses of inquests on bodies of strangers                                  | 174    |
| of townships to keep bridges on State roads in repair                                     | 214    |
| of township treasurer for town funds  | 147    |
| Licenses:   |        |
| for sale of liquor, transfer of to agent  | 132    |
| duplicate, when may be issued   | 132    |
| transfer of to administratrix   | 23     |
| Limitations:  |        |
| statute of, runs against the State  | 58     |

|   | Page |
|---|------|
| Liquor law:   |      |
| construction,   |      |
| duplicate licenses, when may be issued  | 132  |
| parties remaining in saloon after it is closed and drinking is a violation of the statute | 52   |
| billiard room, when held to be part of the saloon   | 21   |
| adoption of local option does not repeal  | 27   |
| each sale is a separate offense   | 47   |
| offense is not of a continuing character  | 47   |
| prosecutions,   |      |
| for violation of, may be had after suspension   | 27   |
| calling of witnesses who were present at the transaction                                  | 22   |
| information for violation of, held sufficient   | 26   |
| counts charging distinct offenses, election   | 36   |
| taxes, collecting, county treasurer acts as agent of township                             | 151  |
| township's portion, withholding, filling school funds                                     | 151  |
| contracts of agency, payment of   | 46   |
| appointment of agent, liability of agent to pay   | 132  |
| transfer of license to agent  | 132  |
| administratrix cannot carry on business without payment of                                | 23   |
| right to carry on business, personal license  | 23   |
| Local option:   |      |
| construction,   |      |
| sale to person intoxicated prohibited, whether to be used for beverage or not             | 47   |
| each sale of liquor is a separate offense   | 47   |
| offense is not of a continuing character  | 47   |
| adoption of, does not repeal general liquor law   | 27   |
| though in force, prosecution under general law may be had                                 | 27   |
| persons selling soft drinks must determine their character                                | 43   |
| drinks sold must not contain any alcohol  | 43   |
| election,   |      |
| petition for re-submission, when may be acted upon  | 199  |
| when may be held  | 199  |
| when continued in force, action by board of supervisors unnecessary                       | 199  |
| information for violation of, when defective  | 14   |
| when sufficient   | 14   |
| when prosecution should be required to elect  | 14   |
| trial for violation of, juror not disqualified because he voted for it                    | 14   |
| nor because he is in favor of its enforcement   | 14   |
| nor because he is in favor of prohibition   | 14   |
| nor because he knows a local option election was held                                     | 14   |
| a juror who supposed defendant ran a saloon is disqualified                               | 14   |
| taking out government license may be considered by jury                                   | 43   |
| question of character of place for jury   | 43   |
| identity of person violating  | 50   |
| Local statutes:   |      |
| when repealed by general laws   | 186  |
| Looses:   |      |
| occasioned through fault of State officers, reimbursement                                 | 172  |
| Lotteries:  |      |
| trust companies maturing bonds by multiple are not  | 141  |
| Maccabees:  |      |
| knights of, provisions of charter exempting from suit, valid                              | 189  |
| Majority:   |      |
| necessary to elect school officers  | 149  |
| Malice:   |      |
| use of the term <i>malo animo</i> in explaining to the jury                               | 30   |
| failure to show, will reduce murder to manslaughter                                       | 14   |
| Malice aforethought:  |      |
| definition of   | 30   |
| Malo animo:   |      |
| use of term in charging jury as to malice   | 30   |
| Mandamus:   |      |
| will not lie to compel officer to do an act which he is not by law required to do         | 77   |
| lies to compel spreading of tax though roll is out of assessor's hands                    | 66   |
| to compel canvassing board to reconvene, when   | 88   |
| Mandatory statutes, <i>see statutes</i> .   |      |
| Mann, Wilson  | 147  |
| Manslaughter:   |      |
| unnecessary to show preconcert of action to render intermeddler guilty of                 | 19   |
| should be defined in murder cases, when the evidence shows lack of malice                 | 14   |
| definition of   | 30   |
| Marble, Ephraim   | 129  |
| Marquette prison:   |      |
| disorderly persons cannot be sentenced to   | 133  |
| Mayor of Detroit:   |      |
| has exclusive power to appoint city counselor   | 101  |
| cannot remove city counselor  | 101  |
| Michigan Central Railroad Company:  |      |
| contract with State, reasonable time to accept  | 178  |
| Military board, <i>see State military board</i> .   |      |
| Military department:  |      |
| expenses of must be paid out of military fund   | 124  |
| Military funds:   |      |
| subject to expenses of military department  | 124  |
| Minors:   |      |
| may hold office of probate clerk  | 164  |

|  | Page     |
|--|----------|
| Misdemeanor:   |          |
| sentences for, to State Prison .....   | 138      |
| Mistake:   |          |
| specific taxes paid under, cannot be recovered back .....                      | 209      |
| State becomes equitable trustee .....  | 209      |
| in describing term of office, effect .....                                     | 213      |
| in referring to title of law when amending, effect .....                       | 162      |
| Morality:  |          |
| reputation for, evidence of not admissible .....                               | 17       |
| Mortgages:   |          |
| how assessed .....   | 201      |
| held by non-residents are not assessable in this State .....                   | 201      |
| cannot be deducted from value of real estate .....                             | 201, 202 |
| convey no title to mortgagee .....   | 129      |
| recording, certificate as to taxes need not accompany .....                    | 129      |
| Morse, Charles H. ....   | 154      |
| Motive:  |          |
| of witness, remarks of prosecuting attorney .....                              | 34       |
| Multiple:  |          |
| bonds matured by, not a lottery .....  | 141      |
| Municipal franchise law:   |          |
| does not affect the right of women to vote at school meetings .....            | 150      |
| Murder:  |          |
| conduct of prosecuting attorney, impartial trial .....                         | 24       |
| interference by third person, responsibility .....                             | 39       |
| instructions as to confessions and malice, held proper .....                   | 30       |
| question as to sanity of defendant, held proper .....                          | 30       |
| previous threats may be considered in determining which is the aggressor ..... | 13       |
| may be reduced to manslaughter, when no malice shown .....                     | 14       |
| trial of husband for, wife cannot testify .....                                | 38       |
| testimony not necessarily showing defendant guilty of .....                    | 39       |
| Nagler, John G. ....   | 202      |
| New corporations:  |          |
| created by surrender of charter .....  | 206      |
| must pay franchise fee .....   | 206      |
| New trial:   |          |
| denying, when not error .....  | 27       |
| first imprisonment cannot be considered in computing good time .....           | 217      |
| Non-alcoholic drinks:  |          |
| sale of .....  | 43       |
| Non-residents:   |          |
| of school districts, renters, payment of tuition .....                         | 160      |
| mortgages held by, not assessable in this State .....                          | 201      |
| Notary public:   |          |
| signature of, when sufficient .....  | 181      |
| of other States, deed executed before, entitled to record .....                | 165      |
| Notes and bills:   |          |
| falling due on holidays and half holidays, when protestable .....              | 137      |
| on Sundays, when protestable .....   | 137      |
| Notice:  |          |
| to prosecuting attorney, of inquests, binds the State .....                    | 93       |
| of election to vote taxes, sufficiency of .....                                | 120      |
| presence of counsel sufficient .....   | 106      |
| Nuisances:   |          |
| rabid dogs are .....   | 180      |
| Objections:  |          |
| must be taken on the trial .....   | 27       |
| not raised by the record will not be considered .....                          | 20       |
| to remarks of court must be made on trial .....                                | 28       |
| to preliminary proceedings, waived by pleading .....                           | 29       |
| waiver of, pleading not guilty .....   | 47       |
| must be called to attention of trial court .....                               | 32       |
| Offenses, <i>see crimes</i> .  |          |
| Office:  |          |
| investigation of, removal from, etc., notice when sufficient .....             | 106      |
| not property within meaning of constitution .....                              | 109      |
| of regent, vacancy in, length of appointment .....                             | 216      |
| of probate clerk, women may hold .....   | 164      |
| minors may hold .....  | 164      |
| officer cannot legally appoint himself to .....                                | 204, 211 |
| title to can only be tested by <i>quo warranto</i> proceedings .....           | 166      |
| term of cannot be limited by ballot .....                                      | 213      |
| Offices:   |          |
| hiring of for labor inspectors .....   | 154      |
| furniture for, purchasing of .....   | 154      |
| Officer:   |          |
| appointment and election, .....  |          |
| city counselor of Detroit, term of office .....                                | 101      |
| cannot legally appoint himself to office .....                                 | 204, 211 |
| may run for office by initials .....   | 213      |
| term of office cannot be limited by ballot .....                               | 213      |
| acts of cannot be attacked because appointed for political purposes .....      | 105      |
| school, must be elected by ballot and not by proxy .....                       | 149      |
| a majority is necessary to elect .....   | 149      |
| compensation, .....  |          |
| period of payment .....  | 169      |

|   | Page     |
|---|----------|
| Officer—powers, duties and liabilities— <i>Continued</i> :                            |          |
| contracts of, private interest.....   | 144      |
| liability of for public funds.....  | 147      |
| loss occasioned by fault of, power of Legislature.....                                | 172      |
| employment of, when prohibited.....   | 152      |
| removal.....  |          |
| of city counselor of Detroit.....   | 101      |
| charges must be specific.....   | 174, 205 |
| may be signed by authority passing upon them.....                                     | 63       |
| must be verified by affidavit.....  | 205      |
| must be endorsed by prosecuting attorney.....   | 205      |
| sufficiency of.....   | 63       |
| wardens of prisons may be removed by boards of control.....                           | 62       |
| what is an "officer of the State".....  | 62       |
| proceedings to remove need not be tried by judicial departments, when.....            | 62       |
| may be removed for incapacity and want of diligence.....                              | 63       |
| by Governor is due process of law.....  | 109      |
| Governor may act as accuser and judge.....  | 109      |
| gross neglect, what is.....   | 110      |
| power of Governor to remove for gross neglect of duty.....                            | 110      |
| citation to, form of.....   | 110      |
| need not be authenticated by great seal.....  | 110      |
| Official bonds:   |          |
| officer to whom given may act as surety on.....                                       | 216      |
| Opinion:  |          |
| of sanity, when predicated upon sufficient facts.....                                 | 31       |
| remarks of prosecuting attorney, held not to express.....                             | 29       |
| Opinions:   |          |
| number given during fiscal year.....  | 4        |
| Opinions of Attorney General.....   | 120-217  |
| Order:  |          |
| entry in journal of court, failure, effect.....                                       | 58       |
| Palmer, O.....  | 213      |
| Parol evidence:   |          |
| of previous convictions, when harmless.....   | 48       |
| Patents, <i>see</i> <i>Deeds</i> .  |          |
| Pattengill, H. R.....   | 160      |
| Penal statutes:   |          |
| cannot be enlarged by intendment.....   | 145      |
| Per diem compensation:  |          |
| of labor inspectors.....  | 154      |
| Perjury:  |          |
| witness cannot be asked if he knows penalty of.....                                   | 24       |
| Personal license:   |          |
| liquor business is in the nature of.....  | 28       |
| Personal property:  |          |
| mortgages should be assessed as.....  | 201      |
| Phelps, C. M.....   | 166      |
| Plats:  |          |
| unrecorded, assessment valid.....   | 196      |
| Pleadings:  |          |
| failure to allege that illegal votes affected result of election, not demurrable..... | 95       |
| replication setting forth evidence, not demurrable.....                               | 95       |
| presenting an issue whether certain ballots were illegal, not demurrable.....         | 95       |
| verification of, held sufficient.....   | 95       |
| tendering an immaterial issue on an item of evidence, not demurrable.....             | 95       |
| issues should be narrowed if possible.....  | 96       |
| rejoinders must set up new matter.....  | 105      |
| must not reiterate allegations of plea.....   | 105      |
| allegations of conspiracy held impertinent and scandalous.....                        | 106      |
| Plea of guilty:   |          |
| claim of nuduly influencing, disposed of by return of trial judge.....                | 39       |
| Pleading to information:  |          |
| waiver of objections.....   | 48       |
| Police power:   |          |
| enactment of Sunday laws.....   | 37       |
| quarantine regulations by State.....  | 113      |
| Political power:  |          |
| canvassing of votes is.....   | 76       |
| Poll lists:   |          |
| are public records.....   | 95       |
| Possession:   |          |
| of stolen property, evidence of burglary.....   | 45       |
| Practice:   |          |
| court will not go outside of printed record.....                                      | 112      |
| when court will reopen case not properly presented.....                               | 112      |
| objections not raised by record will not be considered.....                           | 20       |
| adjournments in criminal cases, when proper.....                                      | 33       |
| waiving trial by jury.....  | 33       |
| opening and closing of proofs and arguments to jury, who entitled to.....             | 99       |
| overruling demurrer, time given to plead.....   | 96       |
| Prejudicial error:  |          |
| remarks of prosecuting attorney held not to be.....                                   | 85       |
| when none, no ground for new trial.....   | 27       |
| Presumption:  |          |
| as to performance of duty by public officer.....                                      | 26       |
| attending official action, weight of evidence.....                                    | 111      |

|   | Page     |
|---|----------|
| Previous convictions:   |          |
| evidence of, sufficient to give jurisdiction.....                           | 48       |
| Previous sentences:   |          |
| question of, how determined.....  | 156      |
| Prisoners:  |          |
| letters of, right of sheriff to open.....                                   | 176      |
| sheriff may confine in cells.....   | 178      |
| good time, computation of.....  | 156      |
| vested rights in.....   | 158      |
| Prison contracts:   |          |
| law providing for, still in force.....                                      | 166      |
| Private corporations:   |          |
| cannot make laws for discharge of offenders.....                            | 65       |
| Private interest:   |          |
| of public officers in contracts.....  | 144      |
| Private roads:  |          |
| damages are assessable against applicant.....                               | 122      |
| labor done on, credit for.....  | 122      |
| Prize fighting:   |          |
| definition of.....  | 21       |
| particular facts constituting, need not be set out in information.....      | 20       |
| act prohibiting sustained.....  | 20       |
| Probate clerk:  |          |
| women may hold office of.....   | 120, 164 |
| minors may hold office of.....  | 164      |
| may issue summons or citation.....  | 120      |
| salary of, board of supervisors cannot refuse, when.....                    | 164      |
| Probate court:  |          |
| jurisdiction to pass on account against ward, when.....                     | 58       |
| given by submitting question to court by stipulation.....                   | 58       |
| failure to make journal entry of order, effect.....                         | 58       |
| Process:  |          |
| issued by governor, sufficiency of.....                                     | 110      |
| Property:   |          |
| office is not within meaning of constitution.....                           | 109      |
| Prosecuting attorney:   |          |
| conduct of, held prejudicial error.....                                     | 24       |
| no right to imply that defendant's witnesses are swearing falsely.....      | 24       |
| remarks of, that certain facts are undisputed, not error, when.....         | 17       |
| held not expressing opinion.....  | 29       |
| concerning expert witness for defense, proper.....                          | 34       |
| absence of, cause for adjournment.....                                      | 38       |
| notice to, of holding inquests, binds the State.....                        | 93       |
| must endorse charges for removal of officers.....                           | 205      |
| list of.....  | 222      |
| Prostitutes:  |          |
| soliciting to enter house of ill-fame not an offense under the statute..... | 16       |
| Protesting:   |          |
| of notes and bills falling due on holidays and half holidays.....           | 137      |
| falling due on Sunday.....  | 137      |
| Proxy:  |          |
| school officers cannot be elected by.....                                   | 149      |
| Public health, <i>see health laws.</i>                                      |          |
| Public interests:   |          |
| statutes for protection of, mandatory.....                                  | 144, 146 |
| Public lands:   |          |
| what are.....   | 207      |
| are exempt from taxation.....   | 207      |
| Public officer, <i>see officer.</i>   |          |
| Public records:   |          |
| admissible, in proof of embezzlement.....                                   | 92       |
| poll lists of elections are.....  | 95       |
| Pupils:   |          |
| may enter school at any time.....   | 208      |
| Purchase price:   |          |
| refunding of, void deeds of State.....                                      | 212      |
| authority of Auditor General.....   | 196      |
| Quarantine, <i>see health laws.</i>   |          |
| Questions:  |          |
| incompetent, ruled out, not cause for reversal.....                         | 35       |
| Quo warranto:   |          |
| notice to respondent of proceeding.....                                     | 106      |
| title to office can only be tested by.....                                  | 166      |
| Rabid dogs, <i>see dogs.</i>  |          |
| Railroads:  |          |
| exemption from taxation does not apply to existing.....                     | 200      |
| liable to expenses in enforcing health laws.....                            | 114      |
| Rape:   |          |
| of child under fourteen, evidence of immorality not admissible.....         | 16       |
| evidence of immorality not competent as bearing on her credibility.....     | 16       |
| evidence of immorality, admissible when.....                                | 16       |
| court should charge what constitutes lesser offenses.....                   | 17       |
| Real estate:  |          |
| mortgages cannot be deducted from value of.....                             | 201, 202 |
| Reasonable time:  |          |
| railroad company has to accept contract with State.....                     | 178      |

|  | Page                            |
|--|---------------------------------|
| Receipts:  |                                 |
| for taxes paid under warrant, no law requiring .....   | 182                             |
| Recognizance:  |                                 |
| filing by clerk, failure to object .....   | 32                              |
| failure to file, immaterial when estreated .....   | 32                              |
| may be reduced by circuit court commissioner .....   | 32                              |
| release of sureties .....  | 33                              |
| surrender of principal into custody of officer .....   | 33                              |
| extortion of, matter of defense .....  | 33                              |
| Recommendations:   |                                 |
| relative to salary of Attorney General .....   | 4-12                            |
| Record:  |                                 |
| printed, court will not go outside of .....  | 112                             |
| Recording:   |                                 |
| of mortgages, tax certificates need not accompany .....  | 129                             |
| of deeds executed outside of State .....   | 185                             |
| tax deeds not entitled to without county treasurer's certificate .....                           | 128                             |
| tax certificates, fees of register of deeds .....  | 123                             |
| Redemption:  |                                 |
| Auditor General may issue his warrant either before or after period of has expired .....         | 162                             |
| expiration of period of, transfer of abandoned lands to State .....                              | 187                             |
| Redemption money:  |                                 |
| when should be refunded by Auditor General .....   | 190                             |
| Refunding:   |                                 |
| of purchase money, authority of Auditor General .....  | 196                             |
| void deeds by State .....  | 212                             |
| of redemption money, when should be made by Auditor General .....                                | 190                             |
| of specific taxes, power of State Board of Review .....  | 209                             |
| Regents of the University:   |                                 |
| vacancy in office of, Governor may fill for unexpired term .....                                 | 216                             |
| Registration:  |                                 |
| not necessary at school elections .....  | 150                             |
| authority of board to refuse .....   | 194                             |
| Register of deeds:   |                                 |
| cannot appoint more than one deputy .....  | 182                             |
| fees of for recording county treasurer's certificate .....                                       | 123                             |
| certificate of county treasurer should be filed in office of .....                               | 123                             |
| Regulations:   |                                 |
| as to rabid dogs by township board of health .....   | 180                             |
| Reilly, C. S. ....   | 128                             |
| Rejoinder, <i>see pleadings</i> .  |                                 |
| Remarks:   |                                 |
| of prosecuting attorney, not prejudicial .....   | 34                              |
| as to appearance of defendant, not prejudicial, when .....                                       | 35                              |
| Removal of officer, <i>see officer</i> .   |                                 |
| Renter:  |                                 |
| payment of school tuition .....  | 169                             |
| Repeal, <i>see statutes</i> .  |                                 |
| Repeal of local option:  |                                 |
| question of, when may be submitted .....   | 199                             |
| Replication, <i>see pleadings</i> .  |                                 |
| Report:  |                                 |
| of senate committee relative to fees paid outside attorneys to assist the Attorney General ..... | 6-10                            |
| Reputation:  |                                 |
| for morality, decency, virtue, etc., evidence of, not admissible .....                           | 17                              |
| Request:   |                                 |
| by surety to take principal into custody not sufficient surrender, when .....                    | 33                              |
| Requests to charge, <i>see also instructions</i> .   |                                 |
| should be given to court .....   | 20                              |
| error should be assigned on .....  | 20                              |
| Res geste:   |                                 |
| evidence of identity admissible as a part of .....   | 51                              |
| statements made by child immediately after alleged offense no part of .....                      | 38                              |
| exclamations of accomplice, when held not to be a part of .....                                  | 27                              |
| Resident freeholders:  |                                 |
| township must possess before boundaries can be altered .....                                     | 166                             |
| Retroactive statutes:  |                                 |
| lessening good time of prisoners .....   | 156                             |
| Returns:   |                                 |
| not duly authenticated, should be counted .....  | 90                              |
| question of regularity to be decided by canvassers .....   | 78                              |
| statute requiring certification, mandatory .....   | 77                              |
| Return of circuit judge:   |                                 |
| as to plea of guilty, whether voluntary, etc., effect .....                                      | 39                              |
| Reversion:   |                                 |
| of title to original owner on payment of taxes by trespasser .....                               | 162                             |
| Reviser:   |                                 |
| meaning of term .....  | 107                             |
| Reward:  |                                 |
| gaming room must be maintained for .....   | 36                              |
| expectation of in prize fights .....   | 21                              |
| Rich, John T. ....   | 153, 178, 174, 205, 211 and 216 |
| Riparian owner:  |                                 |
| lands of, diminishing value, constitutional law .....  | 42                              |
| fishing tackle of, diminishing value, constitutional law .....                                   | 42                              |
| Roads, <i>see highways</i> .   |                                 |

|   | Page    |
|---|---------|
| Rules and regulations:  |         |
| of private corporations, discharging persons accused of crime, unconstitutional | 65      |
| of State Board of Health, delegation of legislative power                       | 66      |
| are proper  | 114     |
| of school board, must be reasonable   | 203     |
| cannot deny children right to enter school at any time                          | 203     |
| Salaries, <i>see also compensation, fees, etc.</i>                              |         |
| of commissioner of schools, period of payment                                   | 169     |
| probate clerk, board of supervisors cannot refuse, when                         | 164     |
| earned in good faith, right of public to recover                                | 90      |
| of Attorney General, recommendation concerning                                  | 4-12    |
| Sale:   |         |
| of lands for taxes in disregard of State's title, void                          | 145     |
| upon condition, cannot be made to State, when                                   | 184     |
| Sanders, G. E.  | 201     |
| Sanity:   |         |
| opinion of, predicated upon sufficient facts                                    | 31      |
| Saving clause:  |         |
| in tax law, completion of assessment  | 170     |
| Scandalous matter:  |         |
| in pleadings, charge of conspiracy  | 106     |
| Schedule A  | 13      |
| B   | 56      |
| C   | 95      |
| D   | 111     |
| E   | 117     |
| F   | 119     |
| G   | 120     |
| H   | 218     |
| I   | 222     |
| Schemmel, Louis N.  | 188     |
| Sclermerhorn, James   | 149     |
| Schools:  |         |
| board may make reasonable rules and regulations                                 | 203     |
| children may enter at any time of the year                                      | 203     |
| non-resident children, tuition, renters   | 180     |
| elections, municipal franchise law does not affect                              | 150     |
| qualifications of voters at   | 150     |
| registration is not required at   | 149     |
| officers are required to be elected by ballot                                   | 149     |
| cannot be voted for by proxy  | 149     |
| majority is necessary to elect  | 149     |
| delinquent school funds cannot be filled by State and county taxes              | 186     |
| cannot be filled by town treasurer  | 183     |
| liquor taxes, retaining by county treasurer                                     | 151     |
| salary of school commissioner, period of payment                                | 169     |
| School board:   |         |
| rules of, must be reasonable  | 203     |
| cannot deny children right to enter school at any time                          | 203     |
| School funds:   |         |
| deficiency in, cannot be filled by city treasurers from State and county taxes  | 186     |
| cannot be filled by township treasurer  | 183     |
| Secretary of State:   |         |
| neglect of duty as member of the board of canvassers, cause for removal         | 110     |
| Sentences:  |         |
| cannot be reduced by lessening good time earned by prisoner                     | 49      |
| disorderly persons cannot be sent to Marquette prison                           | 138     |
| increasing by lessening good time of prisoners                                  | 156     |
| statutory good time no part of  | 156     |
| previous, manner of determining question of                                     | 50, 159 |
| irregular, being in defendant's favor, cannot be taken advantage of by him      | 48      |
| of trial court will not be reviewed, when                                       | 217     |
| on new trial, computation of good time  | 217     |
| to other prisons, cannot be considered in computing good time                   | 54      |
| when void for uncertainty   | 34      |
| of disorderly person, when not excessive  | 180     |
| Settlement:   |         |
| between State and county, unlawful charges, deduction of interest               | 34      |
| Shaffner, S. D.   | 151     |
| Sheriff:  |         |
| right to open letters of prisoners  | 176     |
| may confine prisoners in their cells  | 176     |
| collecting taxes under warrant, giving receipts                                 | 162     |
| Shine, John W.  | 186     |
| Signature:  |         |
| of notary public, when sufficient   | 181     |
| Soldiers:   |         |
| cannot be discharged from home because insane                                   | 177     |
| of home, becoming insane, liability of State to support                         | 177     |
| Soldiers' aid fund:   |         |
| act creating repealed   | 160     |
| Soldiers' Home:   |         |
| inmates of, cannot be discharged because insane                                 | 177     |
| becoming insane, State must support   | 177     |
| Soliciting females to enter house of ill-fame:                                  |         |
| gravamen of offense   | 16      |

|  | Page     |
|--|----------|
| Specific acts:   |          |
| of a criminal nature, proof of .....   | 35       |
| Specific taxes:  |          |
| assessment for, power of State Board of Review to correct .....                            | 209      |
| refunding of, power of State Board of Review .....   | 209      |
| illegal, when paid, State becomes equitable trustee .....                                  | 209      |
| must be applied to certain purposes .....  | 64       |
| Suit:  |          |
| exemptions from, charter provisions valid .....  | 189      |
| Summons:   |          |
| may be issued by probate clerk .....   | 120      |
| issuing of is not a judicial act .....   | 120      |
| Sunday:  |          |
| notes and bills falling due on, when protestable .....                                     | 137      |
| Sunday laws:   |          |
| enactment of, police power .....   | 37       |
| is not class legislation, when .....   | 37       |
| Supervisors:   |          |
| not entitled to pay for committee work when board is not in session .....                  | 57       |
| cannot refuse to spread taxes on assessment roll, when .....                               | 66       |
| <i>de facto</i> , entitled to seat on board of supervisors .....                           | 186      |
| Sureties:  |          |
| on official bonds, officer to whom given may be .....                                      | 216      |
| on recognizance when not released by detention of prisoner .....                           | 33       |
| request of, to take prisoner into custody, will not release .....                          | 33       |
| Surrender of charter:  |          |
| creates new corporation .....  | 206      |
| Surveyed townships:  |          |
| highway labor and money tax must be expended in .....                                      | 203      |
| Suspension:  |          |
| of general laws .....  | 137      |
| State:   |          |
| deeds on behalf of cannot be made by State Board of Auditors .....                         | 208      |
| void deeds of, refunding purchase price .....  | 212      |
| deeds to for public grounds must convey absolute title .....                               | 184      |
| becomes equitable trustee, when illegal taxes are collected .....                          | 209      |
| title of in tax lands cannot be disregarded .....  | 145      |
| settlement with county, unlawful charges, deduction of interest .....                      | 180      |
| statute of limitations runs against .....  | 58       |
| power of to enact Sunday laws .....  | 37       |
| liability, for expenses of inquest on bodies of strangers .....                            | 174      |
| must support members of Soldiers' Home who become insane .....                             | 143      |
| support of insane persons committed from two different counties, computation of time ..... | 143      |
| bound by notice to prosecuting attorney of inquests .....                                  | 93       |
| State authority:   |          |
| what is .....  | 152      |
| State bids:  |          |
| Auditor General is not authorized to sell .....  | 125      |
| rate of interest on .....  | 125      |
| State Board of Corrections and Charities .....   | 178, 186 |
| State Board of Health:   |          |
| rules of, delegation of legislative power .....  | 66       |
| State Board of Review:   |          |
| power to correct assessment .....  | 209      |
| to order refunding of taxes .....  | 209      |
| State Game and Fish Warden:  |          |
| expenses of, in office work, may be allowed by Auditor General .....                       | 210      |
| cannot employ regular clerks or stenographers .....  | 191      |
| State Military Board:  |          |
| should not make requisition on soldiers' aid fund .....                                    | 160      |
| State treasury:  |          |
| money cannot be drawn from, except in pursuance of law .....                               | 209      |
| State roads:   |          |
| bridges on, townships must keep in repair .....  | 214      |
| Statements:  |          |
| of confessed criminal concerning accomplice .....  | 27       |
| Statutes:  |          |
| amendment,   |          |
| title, mistake in reference .....  | 107, 162 |
| construction,  |          |
| order as to taking effect no part of law .....   | 173      |
| conflicting clauses, latter prevails .....   | 173      |
| acceptance of provisions, reasonable time .....  | 173      |
| amendment, exempting from taxation does not apply to existing corporations, when .....     | 200      |
| ambiguous, intention of Legislature .....  | 144      |
| for protection of public interests, mandatory .....  | 145      |
| penal, cannot be enlarged by intentment .....  | 145      |
| requiring election returns to be certified, mandatory .....                                | 77       |
| enactment of, reason for does not concern courts .....                                     | 107      |
| relative to assistance in marking ballots mandatory .....                                  | 98       |
| does not place unreasonable restrictions on right to vote .....                            | 98       |
| relative to notice of voting taxes, mandatory .....  | 120      |
| retroactive, lessening good time of prisoners .....  | 156      |
| legislative declaration of prison rules .....  | 156      |

|   | Page     |
|---|----------|
| Statutes—repeal— <i>Continued</i> :   |          |
| tax law of 1891 expressly repealed by tax law of 1893 .....                               | 183      |
| prison contracts, law still in force .....  | 156      |
| inconsistent provisions .....   | 138, 202 |
| when general laws repeal local statutes .....   | 186      |
| saving clause, completion of tax assessment .....   | 170      |
| intention of Legislature .....  | 160      |
| revision and consolidation repeals all acts in <i>pari materia</i> .....                  | 107      |
| repealing clause construed .....  | 107      |
| Statute of limitations:   |          |
| runs against the State .....  | 58       |
| Stenographer:   |          |
| fees of, for taking inquest, properly allowed, when .....                                 | 93       |
| Storrs, L. C. ....  | 184      |
| Strangers:  |          |
| inquests on bodies of, liability of State .....   | 174      |
| St. Clair:  |          |
| lake of, courts will take judicial notice .....   | 42       |
| Tabulated statement:  |          |
| no part of the certificate of canvassers .....  | 77       |
| Tax certificates:   |          |
| as to delinquent taxes, should be filed where .....                                       | 123      |
| need not be recorded .....  | 123      |
| fees for filing .....   | 123      |
| deeds covering same date and description .....  | 136      |
| need not accompany mortgage when presented for record .....                               | 129      |
| must be presented with tax deed for recording .....                                       | 128      |
| Tax deeds:  |          |
| cannot be recorded until certificate of county treasurer is obtained .....                | 128      |
| Tax sales:  |          |
| authority of Auditor General to cancel .....  | 196      |
| Tax warrants:   |          |
| may issue either before or after the period of redemption has expired .....               | 162      |
| what taxes included in .....  | 162      |
| Taxation:   |          |
| lands held by counties are exempt from .....  | 207      |
| of transfers of property, act providing for void .....                                    | 64       |
| Taxes:  |          |
| general principles,   |          |
| voting, sufficiency of notice .....   | 120      |
| for highways must be expended in surveyed township .....                                  | 203      |
| must be uniform .....   | 64       |
| object of must be stated in law .....   | 64       |
| assessment,   |          |
| power of board of review to correct .....   | 209      |
| completion of assessment under law repealed .....   | 170      |
| real estate mortgages, how assessed .....   | 201      |
| held by non-residents are not assessable in this State .....                              | 201      |
| cannot be deducted from value of real estate .....  | 201, 202 |
| deductions for indebtedness cannot be made from personal chattels .....                   | 201      |
| manner of assessing property of banks .....   | 201      |
| valid though plat unrecorded .....  | 196      |
| dollar marks on assessment rolls unnecessary .....  | 197      |
| spreading of may be compelled by <i>mandamus</i> after roll is in treasurer's hands ..... | 66       |
| double assessment .....   | 116      |
| original tax held valid .....   | 116      |
| levy and apportionment,   |          |
| apportionment by board of supervisors conclusive upon assessing officer .....             | 66       |
| township, certificates of, failure of board of supervisors to examine, effect .....       | 112      |
| collection,   |          |
| warrants for may be issued when .....   | 162      |
| payment of by trespassers giving sheriff's receipt .....                                  | 162      |
| title reverts to original owner .....   | 162      |
| refunding, power of State board of review .....   | 209      |
| illegal, when paid, State becomes equitable trustee .....                                 | 209      |
| liquor, collecting, county treasurer acts as agent of township .....                      | 209      |
| retaining to fill delinquent school funds .....   | 151      |
| State and county cannot be used to fill deficiency in school fund .....                   | 183, 186 |
| sales,  |          |
| abandoned lands, transfer to State .....  | 187      |
| law concerning, time of taking effect .....   | 187      |
| authority of Auditor General to refund purchase money .....                               | 196      |
| to cancel sales .....   | 196      |
| redemption money, when should be refunded .....   | 190      |
| reinstating of lands on books of Auditor General .....                                    | 190      |
| State bids, Auditor general cannot sell .....   | 125      |
| rate on interest on .....   | 125      |
| rate of interest on taxes of 1891 and 1892 .....  | 125      |
| State bids, twenty-five and fifty per cent payments .....                                 | 134      |
| five year clause, construction of statute .....   | 134      |
| power of Auditor General to issue certificates of error .....                             | 125      |
| of lands for, in disregard of State's title, void .....                                   | 145      |
| tax deeds,  |          |
| certificate as to taxes must accompany .....  | 128      |
| need not accompany mortgages when presented for record .....                              | 129      |

|   | Page   |
|---|--|
| Technical terms:  |  |
| use of, when not misleading to jury .....   | 31   |
| Telegraph poles:  |  |
| right of persons to erect along highway, compensation .....   | 25   |
| Term of office:   |  |
| cannot be limited by ballot .....   | 213  |
| Testimony, <i>see evidence</i> .  |  |
| Theory of defense:  |  |
| should be stated to jury by the court .....   | 38   |
| Threats:  |  |
| previons, may be considered in murder cases to determine which party was the aggressor .....                                      | 13   |
| Time:   |  |
| good time of prisoners, how computed .....  | 156  |
| how computed, when insane person admitted to same asylum from two different counties .....  | 148  |
| Title:  |  |
| to lands on which trespasser pays taxes reverts to original owner .....   | 162  |
| Title of act, <i>see constitutional law</i> .   |  |
| Townships:  |  |
| surveyed, highway labor and money tax must be expended in .....   | 203  |
| must keep in repair bridges on State roads .....  | 214  |
| county treasurer acts as agent of, in collecting liquor taxes .....   | 151  |
| cannot retain liquor taxes of, to fill delinquent school funds .....  | 151  |
| boundaries of, cannot be altered by board of supervisors, when .....  | 186  |
| board of supervisors cannot dissolve or vacate .....  | 186  |
| Township board:   |  |
| member of, is eligible to office of census enumerator .....   | 204  |
| cannot appoint himself to such office .....   | 204, 211   |
| cannot act on matters in which he has personal interest .....   | 204  |
| may appoint census enumerator though successors have qualified .....  | 211  |
| Township clerk:   |  |
| when disqualified to vote as member of town board .....   | 204  |
| Township elections:   |  |
| candidates at cannot act as inspectors .....  | 175, 183   |
| Township money:   |  |
| treasurer liable for .....  | 147  |
| Township records:   |  |
| admissible in evidence in embezzlement cases .....  | 32   |
| Township treasurer:   |  |
| liability of for township funds .....   | 147  |
| cannot fill deficiency in school fund from State and county taxes .....   | 183  |
| Transfer:   |  |
| of abandoned lands to State, time for .....   | 187  |
| law concerning, time of taking effect .....   | 187  |
| Transfer of cases:  |  |
| not allowable though justice is material witness .....  | 40   |
| Transfers of property:  |  |
| act providing for taxation of, held unconstitutional .....  | 64   |
| Treasurers:   |  |
| liability of, for public moneys .....   | 147  |
| Trespassers:  |  |
| on tax lands, payment of taxes gives no title .....   | 162  |
| Trials:   |  |
| refusal to permit jurors to state how they would render verdict if evidence was equally balanced in criminal cases is error ..... | 14   |
| proceedings reviewed, and held not fair and impartial .....   | 24   |
| agreements as to addressing jury, binding .....   | 24   |
| remarks of prosecuting attorney, that certain facts are undisputed, when not error .....  | 17   |
| held to be prejudicial error .....  | 24   |
| statements of court, uncontradicted, presumed correct .....   | 17   |
| objections must be taken upon .....   | 27   |
| new, when not granted .....   | 27   |
| by jury, waiver, what amounts to .....  | 33   |
| Trouble:  |  |
| nature of, may be explained by witness .....  | 29   |
| Truancy:  |  |
| act punishing, held constitutional .....  | 53   |
| Trust companies:  |  |
| maturing bonds by multiple not lotteries .....  | 141  |
| Tuition:  |  |
| children of non-residents must pay, renters .....   | 160  |
| Turner, Stanley W. ....   | 125, 144, 145, 163, 180, 187, 190, 207, 209, 210 |
| Unauthorized insurance:   |  |
| section of law permitting, unconstitutional .....   | 130  |
| United States marshals:   |  |
| cannot assist voters at elections in marking ballots .....  | 98   |
| Unofficial persons:   |  |
| cannot make laws for discharge of offenders .....   | 65   |
| Vacancies:  |  |
| filling by election, term of office cannot be limited by ballot .....   | 213  |
| in office of regent, Governor may fill for unexpired term .....   | 216  |
| Variance:   |  |
| in charging date, between complaint and information .....   | 32   |
| Verification:   |  |
| of charges for removal of officers .....  | 205  |
| of pleadings held sufficient .....  | 95   |

|  | Page     |
|--|----------|
| Vested rights:   |          |
| of prisoner in good time .....   | 49, 156  |
| Villages:  |          |
| not liable to keep in repair bridge on State road .....                              | 214      |
| Voluntary plea:  |          |
| when sufficiently shown by return of circuit judge .....                             | 39       |
| Votes:   |          |
| power to count is political, not judicial .....                                      | 76       |
| Voters:  |          |
| must make oath before entitled to assistance .....                                   | 98       |
| cannot be assisted to mark ballot by U. S. marshals .....                            | 98       |
| at city and village elections, legislature cannot prescribe qualifications of .....  | 59       |
| at school meetings, qualifications of .....  | 150      |
| vote must be received when oath taken .....  | 194      |
| Waiver:  |          |
| of objections by pleading .....  | 29, 48   |
| of trial by jury, what amounts to .....  | 33       |
| Ward:  |          |
| debts of, may be allowed by probate court, when .....                                | 58       |
| must be paid from legacy .....   | 58       |
| Wardens of prisons:  |          |
| are not officers of the State .....  | 62       |
| may be removed by board of control .....   | 62       |
| Warrants:  |          |
| for taxes may issue either before or after period of redemption has expired .....    | 162      |
| for taxes, what include .....  | 162      |
| Weight of evidence:  |          |
| presumptions attending official action outweighed when .....                         | 111      |
| question for jury .....  | 41       |
| Whiting, N. T. ....  | 204      |
| Wills:   |          |
| exemption of funds from creditors .....  | 58       |
| Window:  |          |
| slightly opened, further raising constitutes burglary .....                          | 23       |
| Witnesses:   |          |
| competency of, to testify as to sanity of person .....                               | 31       |
| wife cannot be, against husband without his consent .....                            | 38       |
| present when offense was committed, when need not be called .....                    | 22       |
| reputation of for morality, decency, etc., inadmissible .....                        | 17       |
| should be permitted to explain nature of trouble testified about .....               | 29       |
| for defense, implying that they swear falsely, error .....                           | 24       |
| when justice is, cannot transfer case .....  | 40       |
| Women:   |          |
| right of, to vote at school meetings not affected by municipal franchise law .....   | 150      |
| act authorizing to vote at city elections, held void .....                           | 59       |
| may hold office of probate clerk .....   | 120, 184 |
| Woodman, J. J. ....  | 180      |
| Words and phrases adjudged:  |          |
| "gross neglect of duty" .....  | 110      |
| "per annum" .....  | 169      |
| "public lands" .....   | 207      |
| "revise and consolidate" .....   | 107      |
| "State authority" .....  | 132      |
| "officer of the State" .....   | 62       |
| "prize fighting" .....   | 21       |
| World's Fair:  |          |
| limit of expenditure for .....   | 98       |
| World's Fair buildings:  |          |
| sale of, gross proceeds must be turned into State treasury .....                     | 190      |
| World's Fair commissioners:  |          |
| expenditures of are limited to the amount prescribed in the statute .....            | 98       |
| sale of State building by, proceeds must be turned into State treasury .....         | 98       |
| publishing of an "historical report" by .....  | 98       |
| must turn into State treasury gross proceeds of sale of World's Fair buildings ..... | 190      |

## LAWS REFERRED TO.

*Constitution of the United States.*

|                            | Page.   |
|----------------------------|---------|
| Fourteenth Amendment ..... | 86, 109 |

*Constitution of Michigan.*

|                           |             |
|---------------------------|-------------|
| Art. III, section 2 ..... | 62          |
| Art. IV, section 1 .....  | 41          |
| Art. IV, section 15 ..... | 153         |
| Art. IV, section 20 ..... | 41, 47, 180 |

|                                      | Page    |
|--------------------------------------|---------|
| Art. IV, section 25.....             | 107     |
| Art. IV, section 28.....             | 102     |
| Art. VI, section 81.....             | 41      |
| Art. VI, section 32.....             | 36, 41  |
| Art. VII, section 1.....             | 59      |
| Art. XII, section 1.....             | 110     |
| Art. XII, section 8.....             | 62, 109 |
| Art. XIII, section 6.....            | 217     |
| Art. XIV, sections 1, 11 and 14..... | 63      |
| Art. XIV, section 5.....             | 209     |
| Art. XV, section 9.....              | 26      |
| Art. XV, section 11.....             | 189     |
| Art. XV, sections 13 and 14.....     | 59      |
| Art. XVIII, section 14.....          | 123     |

*Compiled Laws of 1871.*

|                   |    |
|-------------------|----|
| Section 1934..... | 58 |
|-------------------|----|

*Howell's Statutes.*

|   |          |
|---|----------|
| Section 92.....                               | 194      |
| Section 137.....                              | 87       |
| Section 202.....                              | 110      |
| Sections 208 and 209.....                     | 86       |
| Sections 213-214.....                         | 86       |
| Sections 274 and 275.....                     | 209      |
| Section 281.....                              | 187      |
| Sections 486 and 487.....                     | 120      |
| Sections 490 and 492.....                     | 85       |
| Section 491.....                              | 56       |
| Section 502.....                              | 93       |
| Section 551.....                              | 182      |
| Section 609.....                              | 205      |
| Section 653.....                              | 214      |
| Section 683.....                              | 32       |
| Section 739.....                              | 204      |
| Section 744.....                              | 32       |
| Sections 747-749.....                         | 147      |
| Section 752.....                              | 124      |
| Sections 891, 861 and 982.....                | 160      |
| Sections 985-990.....                         | 204      |
| Section 1338.....                             | 123      |
| Sections 1392 and 1395.....                   | 181      |
| Section 1635.....                             | 148      |
| Section 1930a8.....                           | 133      |
| Section 1997a1.....                           | 176, 186 |
| Section 2003a2.....                           | 36       |
| Section 2029.....                             | 215      |
| Section 2553.....                             | 25       |
| Sections 3696-3691.....                       | 25       |
| Sections 3693-3713.....                       | 58       |
| Section 4322.....                             | 38       |
| Section 7543.....                             | 214      |
| Section 8682.....                             | 58       |
| Section 8732.....                             | 123      |
| Section 9022.....                             | 16       |
| Section 9094.....                             | 18       |
| Section 9122a.....                            | 44       |
| Section 9124.....                             | 15       |
| Section 9286.....                             | 20       |
| Section 9306.....                             | 37       |
| Section 9314b.....                            | 141      |
| Section 9331.....                             | 144      |
| Section 9355.....                             | 17       |
| Section 9428.....                             | 82       |
| Section 9476.....                             | 91, 174  |
| Section 9598.....                             | 92       |
| Sections 9594 and 9595.....                   | 176      |
| Sections 9635, 9639, 9640, 9658 and 9659..... | 49       |
| Section 9704.....                             | 159      |
| Section 9706.....                             |          |

*Session laws.*

|                                |            |
|--------------------------------|------------|
| 1867, act 150.....             | 164        |
| 1885, act 152, section 11..... | 178        |
| 1885, act 153, section 3.....  | 207        |
| 1887, act 28, section 1.....   | 191        |
| 1887, act 222.....             | 53         |
| 1887, act 284.....             | 215        |
| 1887, act 313.....             | 21, 23, 39 |
| 1887, act 313, section 9.....  | 151        |
| 1889, act 111, section 5.....  | 41         |

|  | Page               |
|--|--------------------|
| 1889, act 195, section 64.....                         | 127                |
| 1889, act 195, section 68.....                         | 125                |
| 1889, act 207.....                                     | 14, 42             |
| 1889, act 207, sections 1 and 2.....                   | 27                 |
| 1889, act 207, sections 6 and 9.....                   | 34, 47             |
| 1889, act 204.....                                     | 175                |
| 1891, act 44.....                                      | 206                |
| 1891, act 52.....                                      | 169                |
| 1891, act 147, section 10.....                         | 162                |
| 1891, act 159.....                                     | 98                 |
| 1891, act 188.....                                     | 190                |
| 1891, act 188, section 8.....                          | 184                |
| 1891, act 190, section 2.....                          | 98                 |
| 1891, act 190, sections 26 and 45.....                 | 97                 |
| 1891, act 190, section 32.....                         | 175, 183           |
| 1891, act 194.....                                     | 183                |
| 1891, act 200, section 43.....                         | 128                |
| 1891, act 200, section 68.....                         | 128                |
| 1891, act 200, section 91.....                         | 127                |
| 1891, act 200, section 111.....                        | 202                |
| 1893, act 26.....                                      | 160                |
| 1893, act 27.....                                      | 66                 |
| 1893, act 47.....                                      | 93                 |
| 1893, act 50.....                                      | 130                |
| 1893, act 74.....                                      | 137                |
| 1893, act 77.....                                      | 206                |
| 1893, act 79.....                                      | 130                |
| 1893, act 101, section 5.....                          | 49, 62, 105, 106   |
| 1893, act 118.....                                     | 133                |
| 1893, act 118, section 29.....                         | 156, 217           |
| 1893, act 118, section 33.....                         | 159                |
| 1893, act 119, section 14.....                         | 154                |
| 1893, act 126, sections 6 and 16.....                  | 200                |
| 1893, act 129, section 3.....                          | 165                |
| 1893, act 137.....                                     | 59, 150            |
| 1893, act 138.....                                     | 36                 |
| 1893, act 143.....                                     | 4                  |
| 1893, act 151.....                                     | 205                |
| 1893, act 174, section 1.....                          | 173                |
| 1893, act 179.....                                     | 187                |
| 1893, act 185.....                                     | 162                |
| 1893, act 186.....                                     | 192                |
| 1893, act 202.....                                     | 175, 183           |
| 1893, act 202, section 1.....                          | 63                 |
| 1893, act 205.....                                     | 153                |
| 1893, act 206, section 54.....                         | 128                |
| 1893, act 206, sections 59, 80, 98, 125 and 126.....   | 145                |
| 1893, act 206, sections 70 and 80.....                 | 127                |
| 1893, act 206, sections 74, 80, 81, 82, 84 and 85..... | 126, 190           |
| 1893, act 206, section 84.....                         | 163                |
| 1893, act 206, section 118.....                        | 170                |
| 1893, act 206, section 125.....                        | 187                |
| 1893, act 206, section 127.....                        | 123, 128, 129, 136 |
| 1893, act 206, section 135.....                        | 134                |
| 1893, act 206, section 136.....                        | 64                 |
| 1893, act 207.....                                     | 184                |
| 1893, act 210.....                                     | 102                |
| 1893, act 422 (Local).....                             |                    |

*General school laws.*

|                 |     |
|-----------------|-----|
| Section 24..... | 149 |
|-----------------|-----|

*Joint resolutions.*

|                |     |
|----------------|-----|
| Number 33..... | 172 |
|----------------|-----|





